

submit a fresh application. If Kifayatullah gave a notice which did not comply with the law, it should have been regarded as no notice at all and the Municipal Committee could have required him to alter or demolish the building; but as it must be taken that the notice given was in compliance with the law, and as the Municipal Committee did not issue any directions within one month of the receipt of the notice, the Municipal Committee had no authority to take any action under sub-section 2 of section 85. It was suggested that section 141 of the Regulation barred the jurisdiction of the Civil Court in cases of this kind. That section empowers the Commissioner or the District Magistrate to suspend the action taken by a Municipal Committee or to prohibit the doing of an act which is about to be done in pursuance of or under cover of the Regulation in certain cases. It seems to us doubtful whether section 141 was intended to apply to such cases as this. Even if it can be construed so as to cover such cases we cannot treat it as barring the jurisdiction of a Civil Court to entertain a suit for damages at the instance of a person who has been wronged by an illegal action of the Committee. In our opinion the suit was maintainable and this is our answer to the reference. Let the papers be returned.

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BOARD OF  
AJMER  
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ULLAH.

## APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

1915  
January, 22.

KANHAI RAM (DEFENDANT) v. DURGA PRASAD AND ANOTHER (PLAINTIFFS)\*  
*Act (Local) No. II of 1901 (Agra Tenancy Act), section 95—Jurisdiction—  
Civil and Revenue Courts—Res judicata—Dispute between two rival  
claimants to a holding.*

A sued B for ejection in a Court of Revenue, alleging that B was his sub-tenant, and obtained a decree. B then sued in the Civil Court for a declaration that he was the owner of a certain occupancy holding and for possession if he was found not to be in possession.

*Held* (1) that B's suit was properly triable by a Civil Court and not by a Court of Revenue and (2) that the previous judgement of the Court of Revenue ejecting B could not operate as *res judicata*.

Neither was the suit barred by section 95 of the Agra Tenancy Act, 1901. That section deals with questions arising between landlord and tenant, and

\*Appeal No. 62 of 1914 under section 10 of the Letters Patent.

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not between rival claimants to a tenancy. *Jagannath v. Ajudhia Singh* (1) followed. *Diwan Singh v. Randhera* (2) overruled.

THE facts out of which this appeal arose were as follows :—

The defendant in the present suit brought a suit in the Revenue Court against the plaintiff in the present suit alleging that he was his sub-tenant and seeking to eject him. The Revenue Court granted him a decree. The defendant in the Revenue Court then brought the present suit, in which he claimed that he was entitled to a certain occupancy holding and for possession if he was found not to be in possession. Both the courts below dismissed the suit on the ground that it was not maintainable. The plaintiff appealed to the High Court, and his appeal coming before a single Judge of the Court was decreed by the following judgement :—

“ I have carefully considered the judgement of the court below. Whether a suit like the one brought by the plaintiff lies at all is a matter of some controversy so far as the decided cases are concerned. My own view is that a suit like this is not prohibited by the provisions of the Agra Tenancy Act. But it is a question whether the finding arrived at in the former suit between the parties in the Revenue Court should not operate as *res judicata*. The question was considered by Mr. Justice CHAMBER in S. A. No. 1001 of 1911. Like him, I am inclined to think that the matter should be deemed to be *res judicata*. But a Division Bench of this Court in a Letters Patent Appeal has taken a contrary view. Sitting as a single Judge I am bound to follow it. I, therefore, allow the appeal, set aside the decrees of the courts below and remand the case to the first court, through the District Judge. That court will restore the suit to its original number in the register and hear and dispose of it according to law. Costs here; and hitherto incurred will be costs in the cause.”

From this judgement the defendants appealed under section 10 of the Letters Patent.

Munshi *Lakshmi Narain* and Babu *Sital Prasad Ghosh*, for the appellant.

The respondents were not represented.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit which was brought under the following circumstances. The defendant in the present suit brought a suit in the Revenue Court against the plaintiff in the present suit alleging that he was his sub-tenant and seeking to eject him. The Revenue Court granted him a decree. The defendant in the Revenue Court then brought the present suit in which he claimed that he was entitled

(1) (1912) I. L. R., 35 All., 14.

(2) (1914) 12 A. L. J., 1322.

to a certain occupancy holding and for possession if he was found not to be in possession. There are other claims which may be disregarded for the purpose of our present judgement. Both the courts below dismissed the plaintiff's claim on the ground that the suit was not maintainable. It was contended that the decision of the Revenue Court operated as *res judicata* and that in any event the present suit was one which could not be maintained in a Civil Court.

On second appeal a learned Judge of this Court held with some reluctance that having regard to the rulings of this Court the decision of the court below was wrong, and he accordingly allowed the appeal and remanded the suit for disposal on the merits. It seems to us that the decision of the learned Judge of this Court was correct.

The plaintiff in the present suit does not allege the existence of the relationship of landlord and tenant between himself and the defendant. His claim is that he is the owner of a certain occupancy tenancy and that the defendant is a trespasser. True it is that if the plaintiff in the present suit is successful the decision in his favour will be inconsistent with the decision of the Revenue Court in favour of the defendant. It seems to us, however, quite clear that the decision of the Revenue Court cannot be relied upon as *res judicata* because the Revenue Court was not competent to try the present suit. If the decision of the Revenue Court cannot be successfully pleaded as *res judicata* then that decision does not render the present suit unmaintainable.

It is next contended that the existing relation between the plaintiff and defendant is one of the matters which could be decided under section 95 of the Tenancy Act. In our opinion this section deals with questions arising between landlord and tenant and not between rival claimants to a tenancy. We have already decided the very point in the case of *Jagannath v. Ajudhia Singh* (1).

The decision in the case of *Diwan Singh v. Randhava* (2), is relied upon by the appellant. The learned Judge in that case seems to have been of opinion that the question of title to an occupancy holding arising between rival claimants could be dealt

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with by the Revenue Court under section 95 of the Tenancy Act. The attention of the learned Judge does not appear to have been drawn to the decision in *Jagannath v. Ajudhia Singh* (1), and it is certainly inconsistent with it. We dismiss the appeal but without costs as no one appears for the other side.

*Appeal dismissed.*

*Before Mr. Justice Chamier and Mr. Justice Figgott.*

1915  
January, 25.

MUHAMMAD MASIHULLAH KHAN AND ANOTHER (PLAINTIFFS) v. JARAO  
BAI AND OTHERS (DEFENDANTS).\*

*Civil Procedure Code (1908), order XXII, rule 10—Redemption of mortgage—Preliminary decree—Sale of mortgaged property—Right of purchaser to be made a party to the suit.*

A preliminary decree for redemption of a usufructuary mortgage was passed in 1908, but there was an appeal, and the decree of the High Court, which confirmed the decree of the court below, was passed in 1910, and the time for payment of the mortgage money was extended. After the time fixed for payment had expired, but before the final decree was passed, the plaintiff decree-holder sold the mortgaged property, leaving with the purchasers a sum sufficient for redemption.

*Held* that the suit was still pending at the time of the sale and the purchasers were entitled to have their names entered in the record as plaintiffs, *Bhugwan Das Khetry v. Nilkanta Ganguli* (2) referred to.

THE facts of this case were as follows :—

A preliminary decree for redemption of a usufructuary mortgage was passed on the 22nd of December, 1908. The decree fixed a certain time within which the money was to be paid into court. On appeal the High Court upheld the decree on the 19th of May, 1910, and extended the time for payment up to the 19th of November, 1910. The money was not paid in by that date. No application was made by the defendant mortgagee under clause (4) of order XXXIV, rule 8, of the Code of Civil Procedure. On the 12th of October, 1912, the plaintiff decree-holder sold the mortgaged property to certain persons and left with them a sum of money sufficient for redemption in accordance with the terms of the decree. The sale-deed did not specifically assign the decree. On the 6th of April, 1914, the vendees applied.

\*First Appeal No. 129 of 1914, from a decree of Banke Behari Lal, Second Additional Subordinate Judge of Aligarh, dated the 30th of August, 1913.

(1) (1912) 1 L. R., 35 All., 14. (2) (1904) 9 C. J. W. N., 171.