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opinion that section 59 of the Easements Act does not entitle the plaintiff to revoke the licence granted to the defendant, even if he is only a licensee. We need only add that the plaintiff's claim, against the defendant as a trespasser, is clearly not maintainable. The suit was rightly dismissed. We dismiss this appeal with costs.

Appeal dismissed.

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 November, 21.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir
 Parmada Charan Bannerji.*

SURAJ MAL (PLAINTIFF) v. HIRA KUNWAR (DEFENDANT.) *

Act (Local) No. II of 1901 (Agra Tenancy Act), section 199—Suit for ejection—Plea that defendant was holding under an unexpired lease—Question of proprietary title.

In a suit for ejection in a Court of Revenue the defendant pleaded that he was entitled to remain in possession under a certain *zar-i-peshgi* lease the term of which had not expired. The Court of Revenue treated the question thus raised as falling under section 199 of the Agra Tenancy Act, 1901, and directed the defendant to file a suit in the Civil Court within three months to vindicate his right. *Held* that section 199 was not applicable and the defendant was not bound to file his suit in the Civil Court within three months from the date of the order of the Court of Revenue.

THE facts of this case were as follows:—

The defendant and Behari Lal, father of the plaintiff, were co-sharers in a village. Behari Lal, who managed the property, gave certain land on *zar-i-peshgi* lease to the plaintiff. After the lease the defendant applied for and obtained partition of the village and thereafter brought a suit in the Revenue Court for ejection of the plaintiff from the plots allotted to him on the ground that the lease was a fraudulent lease. The plaintiff set up his right under the lease. The Revenue Court acting under section 199 of the Agra Tenancy Act directed the plaintiff to file a suit in the Civil Court within three months for a declaration of his right. The plaintiff preferred an appeal to the Commissioner against the order of the Assistant Collector and a further appeal to the Board of Revenue against the order of the Commissioner. It was held that the order of the Assistant Collector was a final order and no appeal lay to those courts. During the

* Second Appeal No. 32 of 1914, from a decree of A. Sabonadiere, District Judge of Aligarh, dated the 2nd of October, 1913, confirming a decree of Lalte Prasad Johri, Munsif of Haveli, dated the 28th of July, 1913.

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time that the plaintiff was carrying on these fruitless appeals the time given under section 199 of the Agra Tenancy Act expired. The defendant did file a suit in the Civil Court, but it was dismissed by both the courts below on the ground of limitation, the appellate Court holding that the plaintiff could not get the benefit of section 14 of the Limitation Act. The plaintiff (defendant before the Court of Revenue) appealed to the High Court.

Munshi *Gulzari Lal*, for the appellant :—

The plaintiff did not set up a proprietary right. He had set up a right under the lease, that is, he claimed to be a tenant of the whole co-parcenary body. The Revenue Court could not, therefore, make any order under section 199 of the Agra Tenancy Act. The order was *ultra vires*. This was a suit for declaration and could be brought within six years of the accrual of the cause of action and the courts below were wrong in dismissing it as barred by limitation.

Dr. *Satish Chandra Banerji*, for the respondent :—

The plaintiff claimed to be a usufructuary mortgagee and that was raising a question of proprietary title. The Revenue Court had, therefore, power to refer him to the Civil Court. The suit should have been brought within the time allowed by law. It is now barred by limitation. Even if the plaintiff was a non-occupancy tenant for a certain term within the meaning of section 19 of the Agra Tenancy Act no suit lay in a Civil Court for declaration of right. Reference was made to sections 95 and 67 of the Tenancy Act. In any case the suit should fail.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit in which the plaintiff sought a declaration that he was entitled to remain in possession of certain property under an alleged *zar-i-peshgi* lease, dated the 9th of September, 1904. It appears that the document in question was executed by one Lala Behari Lal, the father of the plaintiff, in favour of his son. Musammat Hira Kunwar, the defendant, was one of the co-sharers. Partition proceedings were brought in the Revenue Court and a portion of the property alleged to have been leased fell to the lot of Musammat Hira Kunwar. Thereupon she instituted a suit in the Revenue Court for possession of the plots that had

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so fallen to her lot and for ejection of the plaintiff. The plaintiff set up the document of the 9th of September, 1904. The Revenue Court thinking that it was a case to which section 199 of the Agra Tenancy Act applied, directed Suraj Mal to institute a suit in the Civil Court within three months to establish his rights under the lease. Suraj Mal did not institute a suit within the three months prescribed. Both courts have dismissed the suit on the ground of limitation, holding that the suit ought to have been instituted within the three months mentioned in the order of the Revenue Court. Hence the present appeal.

It seems to us open to some doubt whether Musammat Hira Kunwar was entitled to institute her suit in the Revenue Court for ejection. Her case appears to be that the lease of the 9th of September, 1904, was a fraudulent lease made by the lambardar in favour of his own son. If this be her case, and if it be found to be correct, then Suraj Mal would be a trespasser. It seems to us also that the decision of the courts below was not correct. It is quite clear that no question of "proprietary" title was raised in the Revenue Court. The plaintiff in that court sued for possession of certain plots and Suraj Mal set up the plea that she was not entitled to possession, because a lease had been made in his favour by the lambardar. If the suit was properly instituted in the Revenue Court, then the Revenue Court might have decided the question of the validity or the invalidity of the lease itself. But it seems to us that, a cloud having been cast on Suraj Mal's title under his lease, he was entitled to institute the present suit notwithstanding that the period prescribed in the order of the Revenue Court had expired. We particularly wish to state that we are not expressing any opinion on the question of the validity or invalidity of the lease. This is a matter which must be tried. We accordingly allow the appeal, set aside the decrees of both the courts below, and remand the case to the court of first instance, through the lower appellate court, with directions to re-admit the case under its original number in the file and proceed to hear and determine the same according to law. We direct that the court below take up the case as soon as possible. Costs here and heretofore will be costs in the cause.

Appeal allowed and cause remanded.