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statute which is in force and which he is bound to respect. The Act is in full force in the station of Cawnpore for instance and for aught I know may be in full force in the station of Agra. I call the attention of the court below to the case of *C. J. Lucas v. Ramai Singh* and *Emperor v. Bakhtawar* (1), both to be found in I. L. R., 40 All. The learned Joint Magistrate says that he cannot compel Hansa to continue the work which he contracted to perform because it requires him to sit very near the fire. He is said to have been working in the same situation in another factory. This may or may not be true. But the matter should have been inquired into and evidence fully taken. This was not a case for summary disposal. I set aside the orders of both the courts below and I return the case in order that it may be dealt with strictly in accordance with the provisions of Act No. XIII of 1859.

Order set aside and case remanded.

APPELLATE CIVIL.

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June, 28.

Before Mr. Justice Tudball and Mr. Justice Abdul Raof.

NAND LAL SINGH (PLAINTIFF) v. BENI MADHO SINGH AND OTHERS
(DEFENDANTS)*

Costs—Joint decree for costs against defendants claiming under separate titles, defendants being also wrong-doers—Suit for contribution—Suit not maintainable.

Two persons, each holding by a separate title a half share in certain property were arrayed as co-defendants to a suit for recovery of a share in the said property. The plaintiffs obtained a decree with costs, the order for costs being as against the defendants jointly. The plaintiffs decree-holders executed the decree for costs against one of the judgment-debtors, and he then sued the other judgment-debtor for contribution. *Held* that the suit would not lie. *Fakira v. Tasaddug Husain* (2) followed.

THE facts of this case are fully set forth in the judgment of the Court.

The Hon'ble Dr. *Tej Bahadur Sapru* (with him Mr. *Shamnath Mushran* and Pandit *Kailas Nath Katju*), for the appellant.

* Second Appeal No. 1246 of 1916, from decree of Murari Lal, Judge of the the Court of Small Causes, exercising the powers of a Subordinate Judge of Cawnpore, dated the 9th of May, 1916, reversing a decree of Muhammad Junaid, Munsif of Fatehpur, dated the 7th of February, 1916.

(1) (1913) I. L. R., 40 All., 282. (2) (1897) I. L. R., 19 All., 462.

Pandit Baldeo Ram Dave (with him Pandit Braj Nath Vyas and Munshi Nawal Kishore), for the respondents.

TUDBALL and ABDUL RAOOF, JJ. :—The plaintiff appellant in this suit was a person who under a deed of gift executed by one Jagat Singh obtained a half share in certain property. The respondent Ram Lal Singh is a person who received a half share in the same property by an entirely separate deed of gift from that same Jagat Singh. Beni Madho Singh and Zalim are certain persons claiming to be the lawful owners of a certain share in the property. They brought a suit to recover their share and they impleaded both Ram Lal Singh and Nand Lal Singh in the suit. Ram Lal Singh did not defend the suit, but Nand Lal Singh did, and in the course of his pleadings he stated that Ram Lal Singh was at the bottom of the suit and that he had instigated the plaintiffs to sue. Part of the claim was decreed and part of the claim was dismissed. The plaintiffs appealed in respect to so much of their claim as was disallowed. Nand Lal Singh appealed in respect to so much of the claim as had been decreed against him. The plaintiffs' appeal was allowed, and Nand Lal Singh's appeal was dismissed. Ram Lal Singh was a respondent to both the appeals. He contested neither. In the execution department, Ram Lal Singh pleaded that no portion of the share decreed to the plaintiffs should be taken from him, but that it should all be taken from Nand Lal Singh. Nand Lal Singh opposed him. The court held that each of them had in his hands half of the share decreed. The appellate decree, which is the decree of this Court in the plaintiffs' appeal, shows clearly that this Court held that each defendant was separately liable in respect of the property which was in his hands. The order for costs was a joint one. The plaintiffs in the former suit have recovered the whole of their costs from Nand Lal Singh. He has now brought the present suit for contribution, claiming half from the defendant Ram Lal Singh. This is clearly not a case of joint *tort feorsors*. Ram Lal Singh derived his title to the property which was in his hands by an entirely separate deed from Jagat Singh, and Nand Lal Singh derived his title, such as it was, by a separate deed of gift. The two defendants were not at one in defending

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the suit. They were as a matter of fact opposed to each other. Paragraph 15 of the written statement of Nand Lal Singh shows this clearly. Ram Lal Singh in no way contested the suit, whereas Nand Lal Singh did, and it is quite clear that the extra costs that were incurred in that suit were due to the action of the present plaintiff Nand Lal Singh alone. The case is very much like that of *Fakire v. Tasadduq Husain* (1). In this case there was no contract between the present parties. Each was in separate possession of property and there was nothing joint. Each was separately liable for the trespass that he had committed. Each trespass was committed separately, and each defendant's liability for mesne profits was entirely separate. The only thing common between them was that they were arrayed as defendants to the suit. We cannot find any equity in the present case that will enable us to hold that the respondent Ram Lal Singh is in any way liable to the plaintiff for a share of the costs that were recovered from him. The appeal is dismissed with costs to Ram Lal Singh.

It is to be noted that the action of the plaintiff is directed solely against Ram Lal Singh and not against the other respondents. This is clearly admitted before us in open Court.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Ryves.

BIHARI LAL (JUDGMENT-DEBTOR) v. BALDEO NARAIN AND OTHERS
(DECREE-HOLDER).*

Civil Procedure Code (1908), section 115—*Revision—Jurisdiction of High Court—Question of law or fact bearing on jurisdiction of Court.*

When a question of jurisdiction is involved, the High Court is competent to revise a conclusion of law or fact which bears on such question.

Balakrishna Udayar v. Vasudava Ayyar (2) explained.

THE facts of this case were as follows:—

A suit was filed against a minor, Bihari Lal, under the guardianship of his brother Gaya Prasad, and a simple money decree was passed against him for a sum of Rs. 238-15-0. In

* Civil Revision No. 50 of 1918.

(1) (1897) I.L.R., 19 All, 461. (2) (1917) I.L.R., 43 Mad., 798.

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June, 29.