

APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice
Muhammad Rafiq.*

1916
May, 26.

DEO NARAIN SINGH AND OTHERS (DEFENDANTS) v. SITLA BAKHSH
SINGH AND OTHERS (PLAINTIFFS).*

*Act (Local) No. II of 1901 (Ag. a Tenancy Act), sections 95, 177 (f)—Civil
and Revenue Courts—Jurisdiction—Appeal.*

A party to a suit in a Revenue Court cannot, merely by formally raising an absolutely untenable plea of jurisdiction, remove the case from the Revenue Court to a Civil Court.

In this case a suit was brought in a Civil Court to eject the present plaintiffs as trespassers. They thereupon raised the plea that they were not trespassers, but tenants of the then plaintiffs. On this the Civil Court directed them to file a suit in the Revenue Court to have their status as tenants declared. The present suit was accordingly instituted under section 95 of the Agra Tenancy Act. An objection was taken to the jurisdiction of the Revenue Court, but it was overruled, and the Revenue Court proceeded to hear the case and pass a decree. An appeal was preferred to the District Judge and cross-objections were filed by the other side. The District Judge entertained the appeal upon the ground that a question of jurisdiction had been decided, and passed a decree. From this decree the defendants appealed to the High Court, and the plaintiffs filed cross-objections.

Munshi *Haribans Sahai*, for the appellants.

Mr. *A. P. Dube*, for the respondents.

RICHARDS, C. J., and MUHAMMAD RAFIQ, J.:—This appeal arises under the following circumstances. The present defendants brought a suit in the Civil Court for possession against the plaintiffs as trespassers. The latter pleaded that they held the land as tenants to the plaintiffs. The Civil Court thereupon made an order directing the defendants in that suit to institute within three months a suit in the Revenue Court for determination of the question. This order was made under the provisions of section 202 of the Tenancy Act. This suit was thereupon

* Second Appeal No. 429 of 1915, from a decree of B. J. Dalal, District Judge of Benares, dated the 14th of November, 1914, modifying a decree of Bhagwati Dayal Singh, Assistant Collector, First Class, of Jaunpur, dated the 17th of July, 1914.

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instituted asking for a declaration of the nature of the tenancy under section 95 of the Tenancy Act. An objection was taken as to his jurisdiction to hear the suit, which he at once overruled. He then dealt with the suit and made a decree. An appeal was preferred to the District Judge and cross-objections filed by the other side. The learned District Judge entertained the appeal on the ground that a question of jurisdiction had been decided. He then dealt with the case on the merits. An appeal has been preferred by the defendants and the plaintiffs have filed cross-objections. In our opinion no question of jurisdiction was in reality decided by the Assistant Collector. In the first place the suit was brought in compliance with the order of the Civil Court that a suit should be instituted in the Revenue Court. In the next place the suit was under section 95 of the Tenancy Act, which Act expressly provides that suits under section 95 must be brought in the Revenue Court and no other. It was, therefore, absolutely absurd to contend that the Revenue Court had no jurisdiction to hear the present suit. It would be reducing matters to an absolute absurdity to hold that the defendants in a revenue suit could by formally raising an absolutely untenable plea of jurisdiction, take every case from the Revenue Court to the Civil Court. We accordingly allow the appeal to this extent that we set aside the decree of the learned District Judge and remand the case to him with directions to return the memorandum of appeal and the cross-objections for presentation to the proper court. Costs here and heretofore will be costs in the cause.

Appeal allowed and cause remanded.

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November, 5.

Before Mr. Justice Piggott and Mr. Justice Walsh.

RADHE LAL (DEFENDANT) v. BHAWANI RAM (PLAINTIFF) AND
MUSAMMAT BIDYA (DEFENDANT).*

*Hindu law—Succession—Hindu widow—Unchastity in husband's
life-time—Condonation by husband.*

Under the Hindu law, a widow is not debarred from inheriting to her husband on the ground that she had become unchaste in her husband's

*Second Appeal No. 147 of 1916, from a decree of B. O. Forbes, Subordinate Judge of Muttra, dated the 15th of December, 1915, reversing a decree of Gauri Prasad, Munsif of Mahaban, dated the 18th of December, 1914.