

REVISIONAL CIVIL.

Before Mr Justice Piggott.

RAM NATH (PLAINTIFF) v. SEKHDAR SINGH (DEFENDANT).*

1917
July, 2.

Civil and Revenue Courts—Jurisdiction—Tenant taking a partner in cultivation on agreement to pay half the tenant's rent to him—Suit on such agreement by tenant against partner—Small Cause Court.

Plaintiff, being the tenant of certain plots of agricultural land on a rental of Rs. 60 a year, took the defendant into partnership on the terms that they were to cultivate jointly and divide the produce equally, and that defendant was to pay half the rent annually to the plaintiff. Held that a suit by plaintiff to recover from defendant the share of the rent payable by him was a suit for damages for breach of contract cognizable by a Court of Small Causes, and not a suit for rent within the meaning of the Agra Tenancy Act, 1901.

THE plaintiff was the tenant of certain agricultural plots. The defendant became a partner (*sharik*) in the tenancy of the plaintiff, the agreement between them being that they would jointly carry on the cultivation and divide the crops equally, and that the defendant would pay to the plaintiff Rs. 30 annually, being the half share of Rs. 60 which was the amount agreed upon between the parties as being the rent of the holding. The defendant failed to make the said payment and the plaintiff sued him in the Rent Court for it. The Rent Court held that the defendant was not a sub-tenant of the plaintiff and that it could not entertain a suit against a joint cultivator. The plaintiff brought a second suit for recovery of the amount in a Court of Small Causes. That court held that the suit was for recovery of what was essentially rent, "the nature of which could not be changed by agreement between the parties" and that accordingly the suit was not cognizable by that court. The plaintiff applied to the High Court in revision.

Babu *Jogindro Nath Mukerji*, for the applicant, stated the facts, and submitted that the suit was not between a landlord and tenant for recovery of rent. He was stopped.

Munshi *Bhagywati Shankar*, for the opposite party, contended that the suit was for 'rent,' and the relation between the parties was that of 'landlord' and 'tenant,' within the definitions of these terms in the Tenancy Act. There was no privity of contract between the the zamindar and the defendant and so the latter was

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not the tenant of the former. Therefore, the defendant was not the co-tenant of the plaintiff but his sub-tenant. The plaintiff rightly described him as his sub-tenant in the Rent Court, and the defendant never challenged the jurisdiction of the Rent Court to try the suit. The plaintiff should have appealed from the decision of that court. The Rent Court was the only court having jurisdiction. If it were held that the defendant was a co-tenant, even then the suit would not be cognizable by the Court of Small Causes, as it would be a suit for profits against a co-sharer in respect of agricultural land and would be cognizable only by the Revenue Courts.

Babu *Jogindro Nath Mukerji*, was not heard in reply.

Piggott, J.—This was a suit for money in a Court of Small Causes. That court has refused to entertain it on the ground that it is not cognizable by that court, being a suit for rent. It presumably refers to paragraph (8) of the second schedule to the Provincial Small Cause Courts Act, No. IX of 1887. If it were a suit for rent at all it would be cognizable by a Revenue Court under the provisions of the Tenancy Act, and the Revenue Court has already refused to entertain a claim for this money, though the defendant is not to blame for this. On the plaint as drafted the claim is for damages for breach of a contract. I set aside the order of the court below and direct that court to re-admit the suit on to its file of pending cases and to dispose of it according to law. Costs here and hitherto will abide the event.

Application allowed and cause remanded.

Before Mr. Justice Piggott.

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July, 3.

MUNIR-UD-DIN (DEFENDANT) v. SAMIR-UN-NISSA BIBI (PLAINTIFF)*

*Act No. IX of 1887 (Provincial Small Cause Courts Act), schedule II,
article 38—Suit relating to maintenance—Jurisdiction.*

Plaintiff's father-in-law left by his will certain property to plaintiff's three brothers-in-law charged with the payment of Rs. 36 per annum to the plaintiff during her life. Subsequently the brothers-in-law agreed amongst themselves to divide their liability for payment of this annuity, so that each became liable individually for the payment of Rs. 12 per annum. *Held*, on suit brought by the annuitant to recover arrears of her maintenance allowance