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case that an order was made that was "against" the vendor of the plaintiff and that the plaintiff can be in no better position than his vendor. Accordingly we allow the appeal, set aside the order of the court below and restore that of the court of first instance with costs.

*Appeal allowed.*

*Before Mr. Justice Walsh and Mr. Justice Stuart.*

JHUMAK RAI AND ANOTHER (DEFENDANTS) v. BINDESHRI RAI AND OTHERS (PLAINTIFFS)\*.

*Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 233(k) — Partition—Property wrongfully assigned to one party owing to a fraud practised on the Revenue Court—Suit in Civil Court to recover property so assigned—Jurisdiction.*

An action will lie in a Civil Court to provide a remedy where a person's rights have been infringed by some fraudulent act of the defendant, even though the fraud was one practised upon a Revenue Court, and would affect the result of partition proceedings. *Mahadeo Prasad v. Taktia Bibi* (1) and *Raghunandan Ahir v. Sheonandan Ahir* (2) followed. *Muhammad Sadig v. Laube Ram* (3) referred to.

IN the course of proceedings for partition in a Court of Revenue certain bamboo clumps had been assigned to the defendants. The plaintiffs alleged that the trees had been wrongfully assigned to the defendants in consequence of a fraud practised on the Court of Revenue, the fraud consisting of entries wrongfully made in certain revenue papers by subordinate revenue officials acting in collusion with the defendants. The plaintiffs accordingly brought their suit in the Civil Court to recover possession of these trees. The court of first instance dismissed the plaintiffs' suit, finding that a Civil Court had no jurisdiction to entertain it. On appeal, however, the decree of the first court was set aside and the case was remanded for trial on the merits. The defendants appealed to the High Court against this order of remand.

Pandit *Uma Shankar Bajpai*, for the appellants.

Babu *Piari Lal Banerji*, for the respondents.

WALSH, J.:—This is an appeal from an order of remand. The plaintiffs' case is that they have been deprived of their rights by

\* First Appeal No. 7 of 1919, from an order of Jogindro Nath Chaudhri, Subordinate Judge of Ghazipur, dated the 23rd of November, 1918.

(1) (1902) I. L. R., 25 All., 19. (2) (1918) I. L. R., 41 All., 182.

(3) (1901) I. L. R., 28 All., 291.

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the fraud of the defendants. The question arises out of partition proceedings in the Revenue Court. The allegation is not that the partition proceedings were wrongly decided, but that, by an improper entry in the papers made through the dishonest intervention of the defendants by a clerk or some official in the administrative department, the effect of the partition has been injuriously to affect the rights of the plaintiffs. The fraud as stated is a remarkably simple and yet an ingenious one. The question was as to the destination of certain trees. If the trees were to go with the land allotted to any particular party no entry was made in the column provided for remarks, but if the trees were reserved or allotted to some party other than the party who took the land, then an entry was made appropriating the trees to him. The plaintiffs' case is that that entry was made not by the act of the Revenue Court but by the act of the defendants assisted by a dishonest official. Of course, if that were made out, nobody would contend that it ought not to be rectified, and it is to be hoped that there is some remedy somewhere to correct faults of that kind. There is clear authority in this Court, namely, the cases reported in *Mahadeo Prasad v. Takia Bibi* (1), *Raghunandan Ahir v. Sheonandan Ahir* (2), that an action will lie in the Civil Court to provide a remedy where a person's rights have been infringed by some fraudulent act of the defendants, even although the fraud was one practised upon the Revenue Court, and would affect the result of partition proceedings which are the business of the Revenue Court. On the other hand, there is a Full Bench authority of this Court in *Muhammad Sadiq v. Laute Ram* (3), to the effect that Civil Courts have no jurisdiction to entertain a claim to re-open a partition made in the Revenue Courts. What is the appropriate remedy of a person making such complaint? We think he is not necessarily confined to one remedy. It is possible that he might succeed in an application by way of review, or some similar application to the Revenue Court itself, although we do not know whether the Revenue Court will review its own orders on such matters, and it is no doubt true that the Revenue Courts

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(1) (1902) I. L. R., 25 All., 19. (2) (1918) I. L. R., 41 All., 182.

(3) (1901) I. L. R., 23 All., 291.

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are neither accustomed to nor are they the most appropriate places for an investigation of a serious matter of that kind. In this particular case the plaintiffs did in fact apply to the Revenue Court and the Revenue Court declined to interfere, and with considerable circumspection referred them to another court, taking care not to inform them what court it had in its mind. Thereupon the plaintiffs went to another court, perhaps not unnaturally under the circumstances a criminal one on this occasion, and were there met by the objection that they had not obtained sanction. It hardly lies in the mouth of the defendants under these circumstances, when the plaintiffs have arrived at last by a process of elimination at the last court to which they can possibly go, to contend that that court has no right to entertain the complaint. We think there is nothing to oust the jurisdiction of the Civil Court in this case, and that we are bound by the authorities, it being clearly understood that the charge of fraud made in the plaint must be proved against the defendants.

The court which decided this question in *Mahadeo Prasad v. Takia Bibi* (1), took the somewhat narrow view of refusing to say what the nature of the redress would be. They seemed to think that it would be premature to express any opinion upon that question. We do not share that view. The matter is before us as a matter of principle, and there seems no reason why we should not have the courage of our opinions and indicate what is the real remedy which the plaintiffs seek and to which they are entitled if they establish the facts in their favour. The plaint as drafted no doubt fell somewhat short of what was required when it came to the prayer for relief. We do not think that in a matter which in itself is clearly within the jurisdiction of the Revenue Court, unless the plaintiffs' claim is established, a mere claim for possession is the appropriate relief, and the first court itself took that view, pointing out that what they wanted was a declaration that certain papers in the Revenue Department had been tampered with and wrong entries surreptitiously made therein. We think the plaintiffs would be well advised to apply to the trial court to amend the prayer for the relief from the somewhat general terms contained in clause (b) to a definite claim

(1) (1902) I. L. R., 25 All., 19.

for a declaration that they are entitled (assuming always of course that they establish their case in fact) to have the improper entry in the revenue papers removed, and to be restored to the position in which they were before the entry was made. And further, if they be so entitled on the facts to a declaration that they are entitled to possession of the trees which they claim. Assuming that they succeed, armed with these declarations passed in their favour by a competent court deciding the matter upon the merits, they could go to the revenue officer, and we have no doubt that the Revenue Court, over whom of course this Court has no jurisdiction, will respect the decree of the Civil Court and act accordingly. The appeal must be dismissed with costs.

STUART, J.—I concur in the order.

*Appeal dismissed.*

*Before Sir George Know, Acting Chief Justice, and Justice Sir Pramada Chavan Banerji.*

JWALA SINGH AND OTHERS (DEFENDANTS) v. SARDAR AND OTHERS  
(PLAINTIFFS).\*

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Succession to tenancy—Status of illegitimate son of Kshatriya by Sudra woman—Hindu law.*

The illegitimate son of a Kshatriya by a Sudra woman is not a Sudra but of a higher caste called Ugra. *B. in Javana v. Radhamani* (1) followed.

THE facts of this case were as follows:—

One Patipal Singh, who was the natural son of a Kshatriya (Thakur) by a Kachin woman, died leaving some brothers, other natural sons of his father, the defendants appellants, and some natural sons of his own by a Chamarin woman, the plaintiffs respondents. On the death of Patipal Singh the plaintiffs respondents instituted the suit out of which the present appeals have arisen for the possession of the agricultural holdings and tenancy lands of their deceased father, Patipal. The Munsif decreed the suit in part, and both parties appealed to the District Judge, who modified the Munsif's decree and decreed the plaintiffs' claim in full. In second appeal to the High Court a single Judge of the Court confirmed the decree of the lower appellate court. The defendants appealed.

\*Appeal No. 86 of 1917, under section 10 of the Letters Patent.

(1) (1888) I. L. R., 12 Mad., 72.

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