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these circumstances the plaintiff was not entitled to eject the defendant. It is, therefore, not necessary for us to consider the other questions which arise, namely, whether the plaintiff was entitled to sue without joining the other co-sharers in the *khata*. We allow the appeal, set aside the decree of the lower appellate court and restore the decree of the court of first instance with costs in all courts.

Appeal allowed.

REVISIONAL CIVIL.

Before Mr. Justice Tudball.

1918

December, 3.

MUHAMMAD EHTISHAM ALI (DEFENDANT) *v.* LALJI SINGH AND OTHERS (PLAINTIFFS) AND NABBU RANDU (DEFENDANT).*

Act (Local) No. II of 1901 (*Agra Tenancy Act*), *sections* 167 *and* 199—*Landlord and tenant—Suit for rent—Third party impleaded and ordered to institute a suit in the Civil Court for declaration of his title—Revision.*

In a suit for rent instituted in a Court of Revenue the defendant pleaded that he had paid the rent in good faith to a third party. The party so named was impleaded in the suit, and he stated that he was the sole owner of the property in respect of which rent was claimed and was entitled to the entire rent. The court, purporting to act under section 199 of the Agra Tenancy Act, 1901, passed an order directing the third party to institute a suit in the Civil Court for determination of his title.

Held that the High Court was not competent to entertain an application in revision from such order. *Damber Singh* v. *Srikrishn Dass* (1), *Parbhu Narain Singh, Kashi Naresh* v. *Harbans Lal* (2) and *Jamna Prasad* v. *Karan Singh* (3) referred to.

THE facts of this case were, briefly, as follows:—

The respondents instituted a suit in the court of an Assistant Collector for arrears of rent against an agricultural tenant. The tenant pleaded that he had paid the entire rent to Ehtisham Ali. Upon the plaintiffs' application Ehtisham Ali was made a defendant. He pleaded that he was the sole proprietor and entitled to the rent. The Assistant Collector, purporting to act under section 199 of the Agra Tenancy Act, 1901, directed Ehtisham Ali to file a suit in the Civil Court for the determination

* Civil Revision No. 43 of 1918.

(1) (1909) I. L. R., 31 All., 415 (2) (1916) 14 A. L. J., 281 (291).

(3) (1918) I. L. R., 41 All., 28.

of the question of title. From that order Ehtisham Ali filed the present application in revision to the High Court.

Munshi *Harnandan Prasad* (for Munshi *Iswar Saran*), with whom Maulvi *Mukhtar Ahmad*, for the opposite party raised a preliminary objection :—

Under section 115 of the Code of Civil Procedure no revision lies to the High Court from the order of a Revenue Court, as Revenue Courts are not subordinate to the High Court; *Damber Singh* v. *Srikrishn Dass* (1), *Parbhu Narain Singh*, *Kashi Naresh* v. *Harbans Lal* (2), *Jamna Prasad* v. *Karan Singh* (3).

Section 167 of Act II of 1901 is also a bar to the present application.

Mr. *M. L. Agarwala* (with him Dr. *S. M. Sulaiman*), for the applicant :—

Section 185 of the Tenancy Act gives a power of revision to the Board in all cases, except those in which an appeal lies under section 177 to the District Judge. Section 193 of the same Act enacts that the provisions of the Code of Civil Procedure shall apply to all suits and proceedings under the Tenancy Act so far as they are not inconsistent therewith, and in the subsequent clauses to that section the application of certain chapters and sections of the Civil Procedure Code is excluded. But the enumeration does not mention section 622, which is now represented by section 115. Then the only thing that remains to be considered is whether the application of section 115 of the Civil Procedure Code to the Tenancy Act is in any way inconsistent with the provisions of that Act.

It is submitted that the word "appeal" in section 167 of the Tenancy Act includes revisions as well. As a matter of fact appeals and revisions are methods by which a matter is brought before a certain tribunal. The object is the same.

Dr. *S. M. Sulaiman*, followed on the same side :—

Section 167 enacts that all suits and applications of the nature specified in the 4th schedule be heard and decided by Revenue Courts only. Schedule IV simply mentions section 185, under which an appeal lies to the Board. Any other revision can lie in

(1) (1909) I. L. R., 31 All., 445. (2) (1916) 14 A. L. J., 281 (291).
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the High Court. This application cannot lie in the Board under section 185. Hence it will lie here.

TUDBALL, J.:—Revisions Nos. 43, 44, 45, 46, 47 and 48 are connected and arise out of six suits for rent which were brought in the court of an Assistant Collector of the First Class. In No. 43 the applicant for revision here, Muhammad Ehtisham Ali, was an added defendant to the suit for rent brought by Lalji Singh and others against an agricultural tenant. The plaintiffs claimed to be entitled to recover half of the rent from the tenant. The tenant pleaded that he had paid the whole of his rent to Ehtisham Ali. On the plaintiffs' request Ehtisham Ali was made a defendant, and he pleaded that he was the sole proprietor and entitled to the whole of the rent. Thereupon the Assistant Collector, purporting to act under the provisions of section 199 of the Tenancy Act, directed Ehtisham Ali to institute within three months a suit in the Civil Court for the determination of the question of proprietary title which was raised. In the other five suits Ehtisham Ali was himself the plaintiff, and in each case he sued to recover the whole of the rent. In each of these suits the other claimants were made defendants, and they claimed that they were entitled to half of the rent and that Ehtisham Ali was only entitled to the other half. In each of these cases also the Assistant Collector, purporting to act under the same section of the Tenancy Act, directed the plaintiff Ehtisham Ali to institute a similar suit in the Civil Court for the determination of the question of proprietary title. Each of the five revisions now before me is directed to the upsetting of the order passed by the Assistant Collector. A preliminary objection is taken that no revision can lie to this Court against the order of the Assistant Collector. Reliance is placed in the beginning on section 115 of the Code of Civil Procedure, and it is pleaded that the Revenue Court is not subordinate to this Court and therefore section 115 does not apply. Personally I do not think that there is much force in this contention, but it is unnecessary to express any decided opinion in respect to it. It is next pleaded that in view of the language of section 167 of the Tenancy Act, it is clear that the present revisions do not lie to this Court. My attention is called to the decisions of this Court in

Damber Singh v. *Srikrishn Dass* (1), *Parbhu Narain Singh*, *Kashi Naresh* v. *Harbans Lal* (2), and *Jamna Prasad* v. *Karan Singh* (3). The judgment in the first of these three cases covers the point before me. On page 447 it runs as follows:—"There is an express provision in section 167 of the Act that all suits and applications of the nature specified in the fourth schedule of the Act shall be heard and determined by the Revenue Courts; and *except in the way of appeal*, no court other than a Revenue Court shall take cognizance of any dispute or matter in respect of which such a suit or application might be brought or made. This clearly shows that *primâ facie* a revision does not lie to the High Court from an order of the Revenue Court. The remedy in the Civil Court is by appeal only, in cases in which an appeal is given." It is true that the order that was sought to be revised in that case was one passed by an Assistant Collector on an application for execution of a decree, but the court clearly considered the meaning of section 167 of the Tenancy Act, and the meaning there applied to that section clearly covers the present case. In the second of these cases the order sought to be revised had been passed by a District Judge and the chief question was whether in the circumstances of that case any application for revision could lie under section 115 of the Civil Procedure Code. On this point the two Judges who heard the case differed. At the same time one Judge clearly expressed his opinion as to the meaning of the last clause of section 167 of the Tenancy Act, and he held clearly that that barred a revision to this Court. Mr. Justice WALSH only held that a revision would lie on the ground that the decision of the District Judge having been given by way of an appeal from the Revenue Courts, was the decision of a Civil Court and therefore subject to revision, and it almost necessarily follows from his decision that in a case like the present, he would have agreed with his colleague in holding that no revision would lie to this Court. In the third case, a single Judge of this Court held that even where the order was passed by a District Judge in a suit instituted in the Revenue Court, no revision would lie to this Court.

(1) (1909) I. L. R., 31 All., 445. (2) (1916) 14 A. L. J., 281 (291).

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In that case a suit for ejectment was filed in the Revenue Court and the defendants raised a question of proprietary title. The suit was decreed by the Revenue Court and an appeal was preferred to the District Judge, but was dismissed on the ground that no appeal lay to him. An application in revision was filed in this Court, and the learned Judge held that no revision could lie to this Court. He considered the cases which I have already mentioned and came to the conclusion that there was no room for argument that power of revision to the High Court was given under the Tenancy Act. On behalf of the applicant attention is called to section 193 of the Tanancy Act, and it is pointed out that section 115 of the Code of Civil Procedure would apply in all suits and other proceedings under the Tenancy Act, so far as they are not inconsistent therewith, and it is urged that a revision to this Court is not inconsistent with the provisions of the Tenancy Act. It is pointed out that in cases which are not appealable under section 177 of the Act to the District Judge, a revision is given under section 185 to the Board of Revenue. It is then urged that an appeal and a revision are really one and the same thing and that, as appeals lie under section 177 to the Civil Court, therefore there is nothing inconsistent in a revision also lying. In the first place the terms "appeal" and "revision" have technical meanings which are well understood and they are clearly distinguished from each other in the Civil Procedure Code as well as in the Criminal Procedure Code, and where the Legislature uses the word "appeal" and not the word "revision," it must be deemed to have used that word in its ordinary and well understood meaning. It is argued that the words in section 107 "except in the way of appeal" means "except in the way of appeal or revision." The argument is ingenious, but I am afraid that I cannot give way to it. The Legislature must be presumed to have known the meanings of the words "appeal" and "revision," and where it says "except in the way of appeal," it must be held to have meant what it said. The very chapter, No. XII of the Tenancy Act, clearly distinguishes between appeals and revisions. A further argument is raised that section 167 only covers all suits and applications of the nature specified in the fourth schedule and that the revision specified in the

fourth schedule is a revision under section 185, which lies only to the Board of Revenue in certain cases, namely, those in which no appeals lie under section 177 to the District Judge. It is therefore argued that the section does not cover a revision in a case in which an appeal would lie under section 177 to the District Judge. The unfortunate part of this argument is that section 167 says:—"All suits and applications of the nature specified in the fourth schedule shall be heard and determined by the Revenue Courts." The nature of revisions is alike whether they lie in the Civil, Criminal or Revenue Courts, and the language really means that no such application as the present could lie because it is in the nature of an application such as is contemplated by section 185 of the Tenancy Act. I therefore fully agree with the rulings which I have already mentioned in so far as they are applicable to the circumstances of the present case. Here no appeal whatever has been preferred to the District Judge. The case has not gone into the Civil Court at all, and there is no order before me which could in any sense be deemed to be an order of a Civil Court. The language of section 167 of the Tenancy Act is fatal to the present application, and I must therefore uphold the preliminary objection and hold that no revision would lie to this Court in the present case. The application for revision is therefore rejected. It must not be inferred from this that I consider the order passed by the Revenue Court to be a correct one. The application is rejected with costs.

Application rejected.

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott.

EMPEROR *v.* SARJU AND ANOTHER. *

1918
December, 17.

Criminal Procedure Code, sections 110, 117—*Security for good behaviour—Joint inquiry—Statements made by parties concerned amounting to confessions and implicating other parties to the inquiry—Use of such statements as against the others—Act No. I of* 1872 *(Indian Evidence Act), section* 30.

On an inquiry which was being conducted against six persons jointly under sections 110 and 117 of the Code of Criminal Procedure, the case for the

* Criminal Revision No 742 of 1918, from an order of N. C. Stiffe, District Magistrate of Cawnpore, dated the 2nd of May, 1918.