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share in the profits, but they were not to be bound to contribute to any loss. We are perfectly certain that there was no such contract, and we are quite certain that the learned judge never intended to hold that such an absurd contract existed. No doubt Shankar Lal and Mannu Lal contributed no capital and the shares in the partnership given to them were in lieu of their services, but as partners they were entitled to profit and liable to loss in proportion to their shares.

The last point was that the rate of interest, namely, nine per cent. was not the rate agreed upon. On this point we see no reason to differ from the finding of the court below.

We think on the whole the case was carefully tried and justice done by the learned Subordinate Judge. We hope that the brothers may see their way to bring this litigation to a speedy determination without incurring further cost. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

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November, 11.

BALJIT AND OTHERS (PLAINTIFFS) *v.* MAHIPAT AND OTHERS (DEFENDANTS)*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 167*—Civil and Revenue Courts—Jurisdiction—Question exclusively within the jurisdiction of a Court of Revenue decided by that court—Suit in a Civil Court for the purpose of nullifying the Revenue Court's order barred.*

Where a matter exclusively within the jurisdiction of a Court of Revenue has been tried and decided by that court, as between the parties, no subsequent suit will lie in a Civil Court having for its sole object the annulment of the decree passed by the Court of Revenue. *Kishore Singh* v. *Bahadur Singh* (1) followed. *Kanhai Ram* v. *Durga Prasad* (2) distinguished.

THE plaintiffs in this case sued the defendants for ejectment in a Court of Revenue, claiming that the defendants were their sub-tenants. The defendants, on the contrary, pleaded that they were joint tenants with the plaintiffs. The Court of Revenue found that the defendants were in fact joint tenants with, and not sub-tenants of, the plaintiffs and dismissed the suit. The plaintiffs

* Second Appeal No. 1398 of 1916, from a decree of Rama Das, officiating District Judge of Farrukhabad at Fatehgarh, dated the 28th of September, 1916, reversing a decree of Iftikhar Husain, Munsif of Farrukhabad at Fatehgarh, dated the 8th of May, 1916.

(1) (1918) I. L. R., 41 All., 97. (2) (1915) I. L. R., 37 All., 223.

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then brought the present suit in a civil court asking for the ejectment of the defendants from the same land as trespassers. They again asserted that the defendants had once been their sub-tenants, but that the nature of their possession had changed and that they were at the date of the suit merely trespassers. The court of first instance (Munsif of Farrukhabad) decreed the plaintiffs' claim; but on appeal this decision was reversed by the officiating District Judge and the suit dismissed. The plaintiffs appealed to the High Court.

Dr. *Surendra Nath Sen*, for the appellants.

Mr. *N. C. Vaish*, for the respondents.

PIGGOTT, J. :—In this suit the plaintiffs sought the ejectment of the defendants from certain land on the allegation that it formed part of an occupancy holding of which the plaintiffs are the tenants, while the defendants are in possession as trespassers. The case set up was that the defendants had originally entered into possession as sub-tenants, but that when the plaintiffs took proceedings to eject them as such by a suit brought under the Tenancy Act in a Revenue Court, the defendants denied the plaintiffs' title and set up a false claim to be in possession as joint tenants of the holding. It was admitted that this plea had prevailed in the Revenue Court which dismissed the suit for ejectment: as a matter of fact it found in favour of the plea of joint tenancy set up by the defendants. The plaintiffs in the present suit adhered to their claim that the defendants were originally their sub-tenants in respect of the land in suit; they claimed that the nature of the defendants' possession had changed and had become that of trespassers, either from the date on which they denied the title of the plaintiffs in their pleading before the Revenue Court, or from the date of the Revenue Court's decision.

Now it seems sufficiently obvious that if the defendants were originally sub-tenants of this land, they did not become trespassers on the date on which they denied the fact in their Revenue Court pleadings. To hold otherwise would involve this consequence, that a tenant against whom a suit for ejectment was filed in a Revenue Court could

oust the jurisdiction of that court by denying the plaintiffs' title. This suggestion is opposed to the entire spirit of the Tenancy Act and to the express provisions of sections 56 and 199 of the same. Therefore it has been laid down in a number of cases that an agricultural tenancy subject to the provisions of the United Provinces Tenancy Act (Local Act No. II of 1901) is not terminated merely by the lessee's denial of the lessor's title. This was the *ratio decidendi* in the case of *Narain Singh* v. *Govind Ram* (1), a case precisely on all fours with the present. I have repeatedly affirmed the same principle myself, as for instance in *Bechu Sahu* v. *Nandram Das* (2), *Ali Jafar* v. *Phulmanta Kuer* (3). The plaintiffs are therefore reduced to contend—and the sixth paragraph of their plaint shows that this was the position on which they intended to rely—that a change in the status of the defendants was effected on the 14th of July, 1914, when the Revenue Court (erroneously) decided that the defendants were not sub-tenants of the land in suit. This raises the further question, whether the plaintiffs are entitled to succeed upon the plea that the Revenue Court erroneously decided a question which it was the sole court competent by law to determine. It was not merely a matter in respect of which a suit under the Tenancy Act "might be" brought, within the meaning of the concluding words of section 167 of the said Act; it was one in respect of which a suit had actually been brought and had been determined by the sole court competent to entertain the said suit. In my opoinion the Civil Court cannot reconsider this question without violating the provisions of section 167 of the Tenancy Act. This was the view taken by a Bench of this Court in *Kishore Singh* v. *Bahadur Singh* (4), in which judgment all previous authorities are passed in review.

There is said to be authority to the contrary in the case of *Kanhai Ram* v. *Burga Prasad* (5). I think that case

(1) (1911) I. L. R., 33 All., 523.
(2) (1914) 12 A. L. J., 902.
(3) (1915) 13 A. L. J., 843.
(4) (1918) I. L. R., 41 All., 97.
(5) (1915) I. L. R., 37 All., 223.

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is distinguishable on the facts; but I feel more concerned to note that it was decided *ex parte*, and that the contention repelled by the learned judges was that the decision of the Revenue Court operated as *res judicata*. There was no reference made to the provisions of section 167 of the Tenancy Act.

I admit that the entire question of rival claims to a tenancy is not free from difficulty and perhaps requires reconsideration by the Legislature. The provisions of section 199 of the Tenancy Act cover all cases in which a plaintiff claiming to be the proprietor of land brings a suit in a Revenue Court against a person whom he describes as his tenant, and is met by a plea of adverse proprietary title. The issue thus raised must either be referred at once to the Civil Courts; or else it will be tried by the Revenue Court, subject to such provisions as to procedure and right of appeal as will make the decision operate as *res judicata* in any subsequent litigation between the same parties. The fact that a state of things precisely analogous may arise where a plaintiff alleging himself to be the tenant-in-chief of a holding brings a suit in the Revenue Court against a defendant whom he calls his sub-tenant, and is met by a plea of adverse title to the holding, does not seem to have been expressly considered by the framers of the Tenancy Act. My own opinion is that they took it for granted that the proprietor of the holding would always be made a party to such a suit, either at the instance of one or other of the claimants, or by the court of its own motion. He is always a party interested in the result, and he may be vitally interested. Nor can any decision in a suit to which he was not a party finally conclude the question. Whether the dispute between the rival claimants to a tenancy be fought out in a Revenue Court or in a Civil Court, the decision will not bind the proprietor, if he was not a party to it. Obviously he cannot have a tenant whom he objects to, or whose title he denies, foisted upon him as the result of a litigation to which he was no party. There is the possibility of such litigation having been collusive; and in any case it is quite conceivable that there may be rival claimants to the holding of a deceased occupancy tenant, while the proprietor contends that

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there is no heir entitled to succeed and that the occupancy rights have escheated. If the Revenue Courts would always make the proprietor a party to such a litigation as has been above suggested, it would become patent that the dispute as between the proprietor and the rival claimants to the tenancy is one which is absolutely reserved by section 167 of the Tenancy Act to the jurisdiction of the Revenue Courts. In a case like the present, the suit as brought was one, on the face of it, maintainable in the Civil Court; but when that court had all the pleadings and the evidence before it, it could not, without contravening section 167 of the Tenancy Act, go behind the decision of the Revenue Courts that the defendants had not entered on the land in suit as sub-tenants of the plaintiffs.

It follows that the decision of the lower appellate court was correct. The defendants have held the land in suit adversely to the plaintiffs for over forty years. The plaintiffs can only get over this fact by asserting that the defendants were their sub-tenants up to the date of their filing a certain written statement in the Revenue Court, or up to the decision of that court in the ejectment suit. It is not a sound proposition of law that the defendants, if originally sub-tenants, became trespassers on either of these dates; and the plea of sub-tenancy has been heard and finally determined by the only court capable of entertaining it.

I would dismiss this appeal with costs.

WALSH, J.—I agree.

BY THE COURT:—The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

RUPAN RAI AND OTHERS (DEFENDANTS) *v.* SUBH KARAN RAI AND OTHERS (PLAINTIFFS) AND BANWARI RAI AND OTHERS (DEFENDANTS).*

1918 *November*, 15.

Partition—Civil Procedure Code (1908), *order XX, rule* 18 (1); *section* 54—*Suit for declaration of share in family property, being immovable property assessed to land revenue—Act No. I of* 1877 (*Specific Relief Act*), *section* 42—*Consequential relief.*

Where the whole of the property which is the subject matter of a suit for partition consists of landed property assessed to revenue, the suit would be

* Second Appeal No. 1667 of 1916, from a decree of G. C. Badhwar, District Judge of Ghazipur, dated the 25th of August, 1916, reversing a decree of Muhammad Husain, Subordinate Judge of Ghazipur, dated the 27th of July, 1915.