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to mean an interlocutory order in a suit although the order may be of such a nature that it cannot be interfered with even under the provisions of section 105 of the Code when an appeal is preferred from the final decree in the suit. The principle of the ruling of this Court in the case of *Muhammad Ayab v. Muhammad Mahmud* (1) seems to me to be applicable to this case. I have been referred to the recent ruling in the case of *Bhargava and Co. v. Jagannath, Bhagwan Das* (2). With great respect I find great difficulty in following the view adopted in that case. Moreover, the point raised in that case is not similar to that which arises in this case. I am, therefore, unable to hold that an application for revision lies in this case under section 115 and I must dismiss the application on this ground. At the same time I would suggest to the learned Munsif the desirability of reconsidering his order upon proper application being made to him, and of hearing and disposing of the suit and not keeping it pending in his court for another two years or so. I make no order as to costs.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

GOBIND RAI (PLAINTIFF) v. BANWARI LAL AND OTHERS (DEFENDANTS).*

Jurisdiction—Civil and Revenue Courts—Rent-free grantee—Suit by rent-free grantee against zamindar to recover possession after alleged unlawful ejectment.

There is no section in the Agra Tenancy Act and no article in the schedule thereto which provides for a suit by a rent-free grantee to recover possession as such, in the event of his wrongful ejectment, even though that ejectment may be the act of his zamindar. *Nannhu v. Sri Thakurji Mahataj* (3) distinguished.

THIS was a suit for possession in a Civil Court by a rent-free grantee against his zamindars on the allegation that they had dispossessed him wrongfully. The defence, *inter alia*, was that the suit was not cognizable by the Civil Court. The Munsif

* First Appeal No. 105 of 1919, from an order of Kshirod Gopal Banerji, Subordinate Judge of Cawnpore, dated the 14th of March, 1919.

(1) (1910) I.L.R., 32 All., 623. (2) (1919) I. L. R., 41 All., 602.

(3) (1918) I. L. R., 41 All., 37.

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decreed the claim. The lower appellate court held that the suit was not cognizable by a Civil Court and ordered the plaint to be returned for presentation to the proper court. Against this order the plaintiff appealed.

Dr. S. M. Sulaiman for the appellant:—

The ruling in the case of *Nannhu v. Sri Thakurji Maharaj* (1) which was relied on by the lower appellate court is not applicable. There the contention of the plaintiff was that he had acquired proprietary rights by reason of his holding the rent-free grant for more than fifty years and for two generations, as provided by section 153 of the Agra Tenancy Act. The only section under which a suit against a zamindar for possession can be brought is section 79. That section contemplates a suit by a tenant, but section 4, clause (5), of the Tenancy Act lays down that "tenant" does not include a rent-free grantee. As a matter of fact there is no provision in the Agra Tenancy Act under which a rent-free grantee can bring a suit for possession against his zamindar. It is only in a Civil Court that such a suit would lie; *Ajudhia Prasad v. Sheodin* (2).

The respondents were not represented.

PIGGOTT and WATSH, JJ.:—The plaintiff came into Court alleging himself to be the rent-free grantee of certain land. He stated that the defendants zamindars had forcibly and unlawfully ejected him from possession and enjoyment of this land on the strength of certain proceedings which they had taken behind his back in the Revenue Court, to which proceedings he had never been made a party. The suit was brought in the court of a Munsif, who tried out all the issues on the merits and gave the plaintiff a decree. The decree was one restoring the plaintiff to the possession which he had previously enjoyed, that is to say, to the possession of a rent-free grantee, enjoying all the rights, but subject to all the liabilities imposed on such grantees by chapter 10 of the Agra Tenancy Act (No. II of 1901). There was an appeal which was heard by the Subordinate Judge of Cawnpore. It appears that various pleas were taken on behalf of the defendants, but that they were all abandoned except one plea against the jurisdiction of the trial court. The learned

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(1) (1918) I.L.R., 41 All., 37.

(2) (1984) I.L.R., 6 All., 403.

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Subordinate Judge, referring to the decision in *Nannhu v. Sri Thakurji Maharaj* (1) and placing a certain interpretation on the plaint, held that this was a suit cognizable only by a Revenue Court. On this ground he reversed the decision of the first court and dismissed the suit. The ruling referred to by the lower appellate court has no bearing on the facts of the present case. The plaintiff came into court alleging that he had been wrongfully ejected and seeking to be restored to the same possession which he had previously enjoyed. A rent-free grantee is not a tenant within the meaning of the definition in the Agra Tenancy Act (No II of 1901). There is no section in the Act, and no article in the schedule, which provides for a suit by a grantee to recover possession as such, in the event of his wrongful ejection, even though that ejection may be the act of his zamindar. Consequently, if the present plaintiff had no remedy in the Civil Court he had no remedy anywhere. The decision of the lower appellate court is clearly wrong. As the plea of jurisdiction was the only one pressed in that court, it follows that the decision of the court of first instance on the merits must be restored. We accept this appeal, set aside the order appealed against and restore the decree of the first court. The case has been heard *ex parte*, but the appellant must get his costs.

Appeal allowed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

MOJIZ FATIMA BEGAM AND OTHERS (PLAINTIFFS). v. ALI AKBAR
(DEFENDANT).*

*Act (Local) No. II of 1901 (Agra Tenancy Act) sections 104 and 194
—Lambardar and co-sharee—Suit for profits—Liability of lambardar
in respect of rents accruing due before the date of his appointment.*

In a lambardari mahal the lambardar is, from the date of his appointment the agent appointed to act on behalf of the co-sharees, and he is the only person who, under section 194, clause (1), of the Agra Tenancy Act has a right to institute a suit against a defaulting tenant for the recovery of any arrear of rent not statute-barred.

* Second Appeal No. 449 of 1918, from a decree of B. J. Dalal, District Judge of Aligarh, dated the 17th of January, 1918, modifying a decree of Chatura Dat Joshi, Assistant Collector, First class, of Aligarh, dated the 5th of September, 1917.

(1) (1918) I. L. R., 41 AL., 87.

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