

## FULL BENCH.

Before Mr. Justice Tudball, Mr. Justice Lindsay and Mr. Justice  
Kanhaiya Lal.

MUHAMMAD GHAZANFAR-ULLAH (DEFENDANT) v. BABU LAL AND  
ANOTHER (PLAINTIFFS)\*

1921  
April, 29.

*Act (Local) No. II of 1916 (United Provinces Municipalities Act), section 324—Suit for damages by lessee of land against a Municipal contractor for causing obstruction to the use of the land.*

*Held* that section 324 of the United Provinces Municipalities Act, 1916, does not apply to a suit by a lessee of land for damages against a contractor of the Municipal Board who stacks building material upon that land and thereby prevents the lessee from using it.

THE plaintiffs in this case were lessees of a certain *mandi* in Allahabad. The defendant took a contract from the Municipal Board to build, or repair, a small drain in this *mandi* and also to repair certain roads outside the *mandi*. He stacked upon the land of the *mandi* not only materials for the building of the drain, but also materials for the repairing of the road outside. These materials were stacked for at least two months. The plaintiffs filed a suit in the Court of Small Causes for damages against the defendant in that he had stacked all these materials, chiefly the materials for the repairing of the roads, on his land, and had thereby prevented him from using it. The Court of Small Causes having decreed the claim, the defendants applied in revision to the High Court.

The Hon'ble *Saiyid Raza Ali*, for the applicant.

Munshi *Janki Prasad*, for the opposite parties.

TUDBALL, LINDSAY and KANHAIYA LAL, JJ.:—This is an application in revision from a decision of the Judge, Small Cause Court, Allahabad. The plaintiffs are the lessees of a certain *mandi* in Allahabad town. The defendant is a person who took a contract from the Municipal Board of Allahabad to build or repair a very small drain in this *mandi* and also to repair certain roads outside the *mandi*. He stacked upon the land of the *mandi* not only materials for the building of the drain but also materials for the repairing of the road outside. These materials were stacked for at least two months. The plaintiffs sued him for damages for his unlawful act in that he

\* Civil Revision No. 129 of 1920.

stacked all these materials, that is, chiefly the materials for the repairing of the road, on his land, and thereby prevented him from using it. The court below has decreed the claim.

The point raised in this Court was, that the suit would not lie because section 42 of the Sewerage and Drainage Act of 1894 applied and compensation could only be obtained in the manner laid down in that section. As a matter of fact, the aforesaid Act has been repealed and is no longer in force. It was repealed by the Municipalities Act of 1916, *vide* Schedule 9 of that Act. It is urged before us that section 324 of the Municipalities Act would apply. This argument clearly has no force. This is not an act done by the Municipal Board or by any member or any officer or servant thereof nor is it an act in regard to which the Municipalities Act lays down that compensation should be payable by the Municipal Board. There is no force whatsoever in the application. It is therefore dismissed with costs.

*Application rejected.*

## APPELLATE CIVIL.

*Before Mr. Justice Walsh and Mr. Justice Wallach.*

RAM SARAN CHAUBE (DEFENDANT) v. RAM BHAWAN UPADHYA AND ANOTHER (PLAINTIFFS) AND DHUMAN SINGH AND OTHERS (DEFENDANTS)\*

1921  
May, 2.

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 9—Entry of land claimed at last settlement as fixed rate tenancy—Suit between rival claimants—“Conclusive proof.”*

The matter in dispute being whether the land claimed by the plaintiff was his *muafi* or the fixed-rate holding of the defendant, it was held that the entry of the names of the predecessors in title (vendors) of the defendant as fixed rate tenants at the last settlement prior to 1901 was, in virtue of section 9 of the Agra Tenancy Act, 1901, conclusive as to the title of the defendant, and it was not open to the plaintiff to plead that the entry was in fact due to a mistake. *Jai Nath Pathak v. Kalka Upadhyia* (1) distinguished.

THE facts of this case sufficiently appear from the judgment of the Court.

\* Second Appeal No. 751 of 1919 from a decree of Jogendra Nath Chaudhri, First Additional Subordinate Judge of Ghazipur, dated the 10th of March, 1919, confirming a decree of Ram Ugrah Lal, Munsif of Ballia, dated the 13th of November, 1917.