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PARAM  
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v.  
DASRATHMAN  
TIWARI

in the enjoyment for grazing purposes of a specified and limited plot of land. It is clear, moreover, from the recital of the facts in the judgment of Mr. Justice RYVES in the case of *Rameshar Singh v. Madho Lal* (1), that the Board of Revenue is quite prepared to entertain a suit in ejectment against a tenant who is such only by reason of his enjoying a right of pasturage in respect of a particular area. We do not say that the question is altogether free from difficulty, but both the weight of authority in this Court and our own opinion as to the correct interpretation of section 58 and of the definitions in section 4 of Local Act No. II of 1901 are clearly in favour of the appellants. On this ground alone we think the order of the lower appellate court should be set aside. It seems in any case a wholly anomalous and undesirable result that the plaintiffs should be referred to one tribunal for the decision of a claim to rent in respect of this land and to a different tribunal in respect of their claim to possession over this land. We, therefore, allow this appeal and set aside the decisions of both the courts below and, giving effect to the objection of the defendants on the question of jurisdiction, substitute for the decree of the first court an order returning the plaint for presentation to a court having jurisdiction, namely, the court of an Assistant Collector. The appellants are entitled to their costs of this litigation.

*Appeal decreed.*

*Before Mr. Justice Ryves and Mr. Justice Gokul Prasad.*

JEONI (PLAINTIFF) v. KALLU AND OTHERS (DEFENDANTS)\*

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 198—Arrears claimed paid subsequent to suit to one of two co-lessees.*

A mahal was leased to two persons—M, and J. After the death of M, J sued one of the tenants for arrears of rent. The tenant pleaded that he had always paid his rent to M, and after M's death, to his widow. After filing his defence in the suit the tenant proceeded to pay to M's widow the arrears which were then claimed. *Held* that section 198 of the Agra Tenancy Act,

\* Second Appeal No. 941 of 1918 from a decree of E. R. Neave, Additional Judge of Meerut, dated the 17th of April, 1918, confirming a decree of Budh Sen, Assistant Collector, First Class, of Muzaffarnagar, dated the 31st of July, 1917.

1904, did not apply to the case. *Sheo Dihal Singh v. Badri Narain* (1) referred to.

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

Maulvi Iqbal Ahmad, for the appellant.

The respondents were not represented.

RYVES and GOKUL PRASAD, JJ. :—This appeal arises out of the following circumstances. A Nawab gave a lease of a certain Mahal to two persons, the present plaintiff Musammat Jeoni, and one Mubarak Ali. Mubarak Ali died some time ago leaving a son and a widow Musammat Jannat. The son has since died and the widow Jannat is alive. The plaintiff as a lessee brought a suit for recovery of the rent for certain years from Kallu, a tenant. The defence pleaded by Kallu was that he had all along paid the rent to Mubarak Ali during his life time and since his death Musammat Jannat has been collecting rent from the defendant. Up to this day this defendant has had no concern with Musammat Jeoni. It will appear from the statement of defence above referred to, that the defendant nowhere pleaded that he had paid the rent in good faith to Musammat Jannat. The learned Assistant Collector dismissed the suit and the dismissal has been confirmed by the lower appellate court. After he had filed his defence the defendant tenant paid off the rent for the years in suit to Musammat Jannat, and Musammat Jannat who had been impleaded as a party later on, admitted having received the rent. The point raised before us is that the defendant not having alleged that he had paid the rent in good faith to Musammat Jannat, section 198 has no application. The question whether Jannat would be entitled to the rent does not arise in this case as the rent had not been paid to her before the suit was brought. Musammat Jeoni, the plaintiff appellant, is one of the lessees and as such is entitled to receive the rent. That section 198 does not apply to a case like the present is clear from the decision of a Bench of this Court in *Sheo Dihal Singh v. Badri Narain* (1). If that section were meant to apply to cases in which the defendant had only to allege that he was going to pay rent to a certain person in good faith there would have been no

(1) (1905) 7 A. L. J., 198.

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end of the litigation. He might one day say that he was willing to pay the rent to A, whom he thought to be the person entitled to it, and in another suit by A he might plead that since then he has found that C was the real owner and that he was to pay to him in good faith. We think that the view taken by the learned Judges who decided the case above mentioned was a correct view. The result of our observation is that the plaintiff's claim was bound to succeed. We, therefore, set aside the decrees of the courts below and decree the plaintiff's claim with costs in all courts.

*Appeal decreed.*

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*Before Mr. Justice Piggott and Mr. Justice Walsh.*

SRIMATI PRAMILA DEVI (PETITIONER) v. CHANDRA SHEKHAR  
CHATTERJI AND ANOTHER (OPPOSITE PARTIES).\*

*Act No. VII of 1890 (Succession Certificate Act)—Preference as regards the granting of a certificate—Hindu law—Dayabhaga—Childless widowed daughter—Sons of a deceased daughter.*

The parties were governed by the Hindu law of the Dayabhaga School, and the question was whether preference was to be given, as regards the granting of a certificate for the collection of certain debts due to the father, to a widowed childless daughter or to the sons of a deceased daughter.

*Held* that the latter were to be preferred. According to the Dayabhaga a widowed childless daughter would be no heir to her father. *Sreemutty Bimola v. Danjoo Kansaree* (1) not followed. *Banois Koomaree Dabee v. Purdhan Gopal Sahee* (2), *Radhika Kishen Manjhee v. Rajah Ram Mundul* (3) and *Mokunda Lal Chakravarti v. Monmohini Debi* (4) referred to.

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

Babu *Saila Nath Mukerji*, for the appellant.

Babu *Harendra Krishna Mukerji* and *Munshi Vishun Nath*, for the respondents.

PIGGOTT and WALSH, JJ.:—The court below had to decide about the granting of a succession certificate for the collection of certain debts due to a deceased Bengali Brahmin, Babu Karunamoy Banerji. The rival applicants were a widowed daughter with no children and two sons by another daughter

\* First Appeal No. 148 of 1920 from an order of B. J. Dalal, District Judge of Allahabad, dated the 25th of May, 1920.

(1) (1873) 19 W. R., C. R., 189. (3) (1863) 6 W. R., C. R., 147.

(2) (1865) 2 W. R., C. R., 176. (4) (1914) 19 C. W. N., 412.