Before Mr. Justice Piggott and Mr. Justice Walsh.

PARAM HANSMAN TIWARI AND ANOTHER (DEFENDANTS) *v.* DASRATHMAN TIWARI AND ANOTHER (PLAINTIFFS).*

1921 *January, 27.*

Act (Local) No. II of 1901 *(Agra Tenancy Act), sections* 4,58 *and* 63—*Civil and Revenue Courts—Jurisdiction—Suit for ejectment from land used for grazing purposes.*

Held that a suit to eject the defendants from certain land which they held of the plaintiffs on rent, primarily as pasture land and incidentally for the sake of a certain kind of long grass which grew there, was a suit which would lie in a Court of Revenue and not in a Civil Court. *Abdul Qayum* v. *Fida Husain* (1) overruled. *Rameshar Singh* v. *Madho Lal* (2) followed.

THE facts of this case are fully stated in the judgment of the Court.

Pandit *Uma Shankar Bajpai*, for the appellants.

Babu *Sital Prasad Ghosh*, for the respondents.

PIGGOTT and WALSH, JJ.:—This suit was brought in the court of the Munsif of Deoria. The plaintiffs claimed between them to be the holders of the proprietary rights in respect of a particular plot of land, 16 biswas in area. They said that this land had never been brought under cultivation, but grew from year to year a crop of tall grass known locally as *khar*. They alleged that the defendants had the use of this plot of land for many years by grazing their cattle over it and cutting the tall grass if they saw fit to do. They claimed that the defendants' enjoyment of this land gave them no status higher than that of a licensee, although they admitted that rent was annually paid by the defendants. Bringing the suit, therefore, in the Civil Court, they claimed a decree for possession and arrears of rent for three years at the rate of Rs. 5 a year. The defendants pleaded that the suit as brought was not cognizable by the Civil Court, but should have been brought as a suit for the ejectment of a non-occupancy tenant in the court of an Assistant Collector. They raised other pleadings upon which issues were framed regarding the length and nature of the defendants' possession, the amount of the rent and the necessity or other-

* Second Appeal No. 1271 of 1918 from a decree of Muhammad Shafi, Additional Subordinate Judge of Gorakhpur, dated the 12th of August, 1918, modifying a decree of Lakshmi Narain Tandon, Munsif of Deoria, dated the 25th of February, 1918.

(1) (1915) 13 A. L. J., 854. (2) (1919) I. L. R., 42 All., 36.

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wise for the issue of notice by the plaintiffs to the defendants prior to the institution of a suit for ejectment. The court of first instance found in favour of the plaintiffs on every point, except as regards the amount of the rent, and passed a decree in their favour for possession over the land by ejectment of the defendants and for three years' rent at the rate of Re. 1 a year. In appeal the Additional Subordinate Judge has held that the claim for arrears of rent was not maintainable in the Civil Court, but that the claim for possession by ejectment of the defendants was so maintainable and had been rightly decreed. He amended the decree of the first court accordingly. The appeal before us is against the decision of the lower appellate court. Various points have been taken and argued with much keenness. It is contended that the land in suit is in fact held by the defendants for agricultural purposes within the meaning of section 4, clause (2), of the Agra Tenancy Act, No. II of 1901. Further, that whether this be so or not, the defendants have been paying rent on account of rights of pasturage within the meaning of the definition of the word "rent" in clause (3) of the same section, and are therefore "tenants" within the meaning of clause (5). From this it is further argued that, if the defendants be held to be tenants upon this basis, they can only be non-occupancy tenants, and are, therefore, liable to ejectment, if at all, by means of a suit brought under section 63 of the aforesaid Tenancy Act read with section 58 of the same. If the suit is one which should have been brought in the court of an Assistant Collector the cognizance of the Civil Court is barred by section 167 of the Tenancy Act. A further point has been taken that the position of the defendants is in any case not that of mere licensees, that they have a prescriptive right to the enjoyment of this land which cannot be revoked at the will and pleasure of the plaintiffs and that, if the suit is treated as one cognizable by the Civil Court, then it is a suit against lessees, so that notice was necessary under the appropriate provisions of the Transfer of Property Act, No. IV of 1882. This case has been referred to a Bench of two Judges because of a conflict of authority in this Court on the question of the definition of agricultural land and as to the effect of sections 58 and 63 of the Local Tenancy Act.

The authority of Mr. Justice CHAMIER in *Abdul Qayum* v. *Fida Husain* (1) is quoted for the proposition that a suit against a tenant of grazing land or in respect of ejectment from land solely used for the purposes of pasturage is not entertainable by the Revenue Court. This decision is based on an older decision by the same learned Judge which was not called in question before him in *Abdul Qayum* v. *Fida Husain* (1), and that again purports to follow a reported case of the Board of Revenue. Mr. Justice CHAMIER obviously read section 58 of the Tenancy Act as if the words "from his holding" were to be understood after the word "ejectment" from the previous section. He says, in the case in which he first dealt with this question, that both sections 57 and 58 obviously refer to ejectment from a holding. There is clear authority of this Court to the contrary, in the decision of a Bench of two Judges, in *Rameshar Singh* v. *Madho Lal* (2). According to the practice of this Court the decision of a Bench of two Judges should be followed rather than that of a single Judge, if there appears to be conflict between them. We agree, moreover, with the reasoning of Mr. Justice RYVES in *Rameshar Singh* v. *Madho Lal* (2). One thing seems to be put quite beyond question by the wording of the definitions of the words "land" and "tenant" in section 4 of the Agra Tenancy Act, No. II of 1901, and this is that a man may be a "tenant," subject to the provisions of that Act, without being the tenant of a "holding." It seems clear, therefore, that we ought not to import into section 58 of the Tenancy Act any reference to a "holding" from the previous section. On the general principles governing the interpretation of Statutes the more correct view would seem to be that the omission of all reference to a "holding" in section 58 was intentional, and was due to the fact that the framers of the Act recognized the point to which we have already called attention, namely, that a non-occupancy tenant need not necessarily be the tenant of a holding. The decision of the Board of Revenue which weighed with Mr. Justice CHAMIER proceeded upon a very peculiar and unusual state of facts, and we very much doubt whether it could be applied to a case like the present, where the defendants are

(1) (1915) 13 A. L. J., 854. (2) (1919) I.L. R., 42 All., 36.

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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)*

1921 *January*, 28.

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.

(1) (1919) I. L. R., 42 All., 36.