

1921

RAJA
MUHAMMAD
ABUL HASAN
KHAN
v.
LACHMI
NARAIN.

rights under the *pottah* of 1802 or the decree once they got back into possession.

On the whole their Lordships concur with the Judicial Commissioners in holding that the respondents, as declared in the decree of 1871, possess an under-proprietary right in the village of Kundarwa, granted to their ancestor in 1802. The appeal will, therefore, be dismissed with costs, and their Lordships will humbly advise His Majesty accordingly.

Solicitor for appellant: *E. Dalgado.* *Appeal dismissed.*

Solicitors for respondents: *Burrow, Rogers and Neville.*

1920
December, 16.

APPELLATE CIVIL.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Ryves.

RATAN SINGH (PLAINTIFF) v. PRAN SUKH (DEFENDANT)*.

Act (Local) No. II of 1901 (Agra Tenancy Act), sections 95 and 177(f)—Suit for declaration of status of tenant—Plea that plaintiff was not a tenant at all—Question of jurisdiction decided—Appeal.

In a suit, which was framed as a suit under section 95 of the Agra Tenancy Act, 1901, asking for a declaration of the plaintiff's status as an occupancy tenant, the defendant zamindar pleaded that the plaintiff was a mere trespasser, and further stated that "there was no allegation in the plaint regarding the jurisdiction of the court as was required under the law." An issue was framed—"Is the suit under section 95, Act II of 1901, maintainable and cognizable by this Court"—upon which the decision was—"Section 95 of the Tenancy Act is the only section under which such suits can be brought. The suit is maintainable under section 95 and as such is cognizable by this Court" *Held* that it could not be said that in these circumstances a question of jurisdiction had been decided within the meaning of section 177(f) of the Agra Tenancy Act, 1901, and the appeal lay to the Commissioner and not to the District Judge.

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

Babu Piari Lal Benerji, for the appellant.

Munshi Giridhari Lal Agarwala, for the respondent.

MUHAMMAD RAFIQ and RYVES, JJ.:—The three appeals Nos. 94, 95 and 96 of 1918 are connected and arise out of three separate suits brought by the same plaintiff under section 95 of

*Second Appeal No. 94 of 1918 from a decree of D. R. Lyle, District Judge of Agra, dated the 23rd of November, 1917, reversing a decree of Muhammad Husain, Assistant Collector, First Class, of Agra, dated the 26th of March, 1917.

Act No. II of 1901, in the court of the Assistant Collector of Agra. The cases came up for hearing at first before a single Judge of this Court who has referred them to a larger Bench. The facts are given at some length and with great clearness in the judgment under appeal and we propose to reproduce them from that judgment. It appears that Ram Prasad was the occupancy tenant of the holdings which are the subject matter of dispute in these three appeals. He died prior to 1901, leaving him surviving a widow, whose name was brought on the revenue papers in place of Ram Prasad. She died in 1903, and Ratan Singh, the plaintiff appellant, is said to have obtained possession after her death. We say that he is said to have obtained possession after her death advisedly, because in the present litigation he alleges that he was joint in cultivation with his uncle Ram Prasad and remained in sole cultivatory possession of the holdings in suit after his death. The defendants respondents sued Ratan Singh for ejection from the holdings in question, describing him to be a mere tenant at will. He resisted the suits on the sole ground that he was the adopted son of Ram Prasad and as such was entitled to succeed to the occupancy holdings left by him. The plea in defence was disallowed by the learned Commissioner and the ejection of Ratan Singh was ordered on the 26th of August, 1913. The order of the learned Commissioner was upheld by the Board. On the 16th of October, 1913, formal possession was delivered to the zamindars. After his failure in the revenue courts Ratan Singh filed a civil suit in the court of the Subordinate Judge asking for a declaration that he was the adopted son of Ram Prasad. The suit of Ratan Singh failed both in the first court and on appeal. In spite of the order of ejection against Ratan Singh he remained in possession all the time. The respondents sued him in the Civil Court by three separate suits for ejection from three separate holdings, describing him as a trespasser. Damages were also claimed against him. Ratan Singh pleaded, *inter alia*, that he was the occupancy tenant of the three holdings. On the basis of the defence raised by Ratan Singh the learned Munsif, in whose court the three civil suits were filed, directed Ratan Singh to institute suits in the Revenue Court for the

1920

RATAN
SINGH
v.
PRAN SURH.

1920

RATAN
SINGH
v.
PRAN SURH.

determination of the status of his occupancy. In accordance with the direction of the learned Munsif, Ratan Singh filed the three suits out of which the three appeals before us have arisen. The three suits were filed by Ratan Singh in the court of the Assistant Collector of Agra under section 95 of Act No. II of 1901. In the written statement the zamindars stated as follows:—

“The plaintiff is not a tenant of any kind whatsoever. On the contrary he is a trespasser.”

“The petition of plaint is defective. There is no allegation therein regarding the jurisdiction of the court as is required under the law.”

On the basis of paragraphs 5 and 6 of the written statement of the zamindars the learned Assistant Collector framed the following issue:—

“Is the suit under section 95 of Act No. II of 1901 maintainable and cognizable by this Court”?

The judgment of the first court on this issue is as follows:—

“Section 95 of the Tenancy Act is the only section under which such suits can be brought. The suit is maintainable under section 95 and as such is cognizable by this court.” The claim of Ratan Singh plaintiff was decreed. The defendants, that is the zamindars, preferred appeals to the court of the Commissioner who on the report of his office returned the memoranda of appeals to the appellants with the direction that the appeals lay to the District Judge. Thereupon the three appeals were filed in the court of the District Judge. No objection was taken before the learned District Judge to the effect that the appeals, as a matter of fact, lay to the Commissioner and not to him. The learned District Judge heard the three appeals and disposed of them on the merits. He disagreed with the first court and held that Ratan Singh had not acquired the rights of an occupancy tenant. The three appeals were allowed and the decrees of the first court were set aside. Ratan Singh in his appeals to this Court contends that no question of jurisdiction properly so called was raised in the case and that the appeals lay to the Commissioner and not to the court of the District Judge. We have been referred in support of the argument for the appellant

to the following cases :—*Deo Narain Singh v. Sitla Bakhsh Singh*, (1) *Umrai Singh v. Erwar Singh* (2) and Second Appeal No. 456 of 1918, decided by one of us on the 1st of November, 1920. On behalf of the respondents the argument is that the plea of jurisdiction was raised in the first court and was decided. Under section 177, clause (f), of Act No II of 1901 if the plea of jurisdiction has been decided, the appeal lies to the District Judge. In our opinion no plea of jurisdiction was a really raised or decided in the present case. All that the defendants pleaded in their written statement was that the plaintiff was a trespasser and that he had failed to make in his plaint any allegation regarding the jurisdiction of the court as is required under the law. We are unable to understand the meaning of the objection contained in paragraph 6 of the written statement. The suit of the plaintiff was framed under section 95 of Act No. II of 1901 and such suits are exclusively triable by a revenue court. If the contention for the respondents is that in spite of the clear frame of the suit under section 95 of Act No. II of 1901, the mere denial by the defendants that the plaintiff was a tenant raised the plea of jurisdiction, we are unable to accept the argument. So far from raising any plea of jurisdiction, the tenor of the written statement shows that the defendants asked the learned Assistant Collector to decide on the merits whether the plaintiff was a tenant, thereby admitting that the learned Assistant Collector had jurisdiction to try the suit. We are, therefore, of opinion that the appeals lay from the decision of the learned Assistant Collector to the court of the learned Commissioner. We allow this appeal and set aside the order of the lower appellate court and direct it to return the memorandum of appeal to the appellant for presentation to the court of the learned Commissioner. The costs of this appeal will be costs in the cause.

1920

RATAN
SINGH

PRAN SUKH.

Appeal allowed.

(1) (1916) I. L. R., 40 All., 177.

(2) (1918) I. L. R., 41 All., 270.