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possession of the same, did not fall within the purview of section 92.

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We see no reason, therefore, to interfere with the decree passed by the courts below and dismiss the appeal with costs.

Appeal dismissed.

Before Sir Grimwood Mears, Knight, Chief Justice and Mr. Justice Gokul Prasad.

RAM DAS AND ANOTHER (PLAINTIFFS) v. DUBRI KOERI (DEFENDANT).*

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June, 5.

Jurisdiction—Civil and Revenue Courts—Res judicata—Suit for ejectment as sub-tenant—Decision by Revenue Court that defendant was a tenant-in-chief—Subsequent suit in Civil Court to get round this decision.

Where a Court of Revenue has decided a question as to the status of a tenant, neither party to the proceedings in such court can reopen the question by means of a suit in a Civil Court. *Baljit v. Mahipat* (1) followed.

THIS was an appeal under section 10 of the Letters Patent from the judgment of a single Judge of the Court. The facts of the case sufficiently appear from the judgment under appeal, which was as follows :—

The facts of the suit out of which this appeal has arisen are as follows :—Ram Das and Raja Ram claimed to be tenants-in-chief of a certain agricultural holding. They asserted that Tilak and others were their sub-tenants and sued to eject them through the Rent Courts. The case went as far as the Commissioner of Benares. The Commissioner decided that Dubri paid the rent of the fields to the zamindar and that there was no evidence that the plaintiffs (appellants) paid rent to the zamindar or collected rent from Dubri or the other defendants. He therefore dismissed the suit for ejectment. Ram Das and Raja Ram then instituted a suit in the court of the Munsif against Dubri for his ejectment. They again pleaded that they were tenants-in-chief of the same plots. They were in some difficulty as to how Dubri was to be described. In their plaint they described him as a trespasser who posed as a sub-tenant. The lower courts have decreed the claim for Dubri's ejectment. The first point for decision in the second appeal that Dubri has filed is whether the Civil Court has any jurisdiction in such a matter. The point is not an easy one, but I think that it is now concluded in this Court by authority. In *Kishore Singh v. Bahadur Singh* (2) a Bench of this Court decided that where a Revenue Court in a suit for ejectment found that B was A's sub-tenant, and accordingly decreed B's ejectment, a subsequent suit in a Civil Court was not maintainable. This decision is only important as showing the trend of judicial opinion in this Court. A more important decision is that in *Baljit v. Mahipat* (1). There the plaintiffs sued the defendants in the Revenue Court to eject them from a holding on the ground that the latter were sub-tenants. The defendants pleaded that they were joint tenants. The Revenue Court dismissed the suit holding that they were joint tenants. A Bench of this Court decided that a Civil Court had no jurisdiction to decide the case. The learned counsel for the respondents has pointed out that another Bench decided, in *Mukh Ram v. Chhajju* (3), that when in a suit brought in a Revenue Court the plaintiff failed to obtain the defendant's ejectment as a tenant, a subsequent suit in the Civil Court to obtain his ejectment as a trespasser was not barred by *res judicata*. It does not appear to have been discussed in that case whether the Civil Court had or had not any jurisdiction and the point may well have been left open, for the

* Appeal No. 45 of 1921, under section 10 of the Letters Patent.

(1) (1918) I. L. R., 41 All., 203.

(2) (1918) I. L. R., 41 All., 97.

(3) (1919) 17 A. L. J., 646.

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Bench disposed of the appeal on the preliminary point that the suit was not barred by *res judicata*, and upheld the order of the lower appellate court remanding it for decision on its merits; but in view of the past conflict of opinion I might have been disposed not to take the responsibility of deciding the point myself as a single Judge, were it not that in a recent decision of a Full Bench in *Mullo v. Ram Lal* (1) it was practically decided that where a Rent Court had come to a finding as to the nature of a tenancy and a description of the tenant, a Civil Court could not go behind that finding. Perhaps the most illuminating passage upon the point in all these decisions will be found in what PIGGOTT, J., says in *Baljit v. Mahipat*. The view I have taken of the present case is as follows:—Here the Rent Court decided clearly and definitely that Dubri was a tenant of the zamindar. It is true the zamindar was not a party to the suit, but as against a rival claimant to the tenancy it was decided that Dubri was tenant, that he paid rent to the zamindar, that the relationship of landlord and tenant existed between him and the zamindar and that the other side had no rights in the matter. The defeated side has come to the Civil Courts, and has asked them, almost in so many words, to set aside the decision of the Rent Court. If the Rent Court had gone outside its province in the decision, if it had no jurisdiction, if it had been expressing an opinion on points on which it could not finally adjudicate, the loser might go to a Civil Court and it would be open to the Civil Court to ignore the Rent Court's decision; but in this particular case the present plaintiffs had themselves invited the Rent Court to decide whether they were the tenants of the holding or whether the other side were the tenants of the holding. The Rent Court had to decide not only that the plaintiffs were not tenants of the holding but that Dubri was a tenant of the holding. It was their duty to decide these points and they could not do other than what they did. It appears to me not open to doubt that such being the case, the losing party, after having exhausted their remedy by way of appeal in the Rent Court, cannot come up to the Civil Court and raise the same question all over again and that they have been precluded from doing so under section 167, Local Act II of 1901. Section 167 lays down that no court other than a Rent Court shall take cognizance of any dispute or matter in respect of which any such suit or application of the nature specified in the fourth schedule might be brought or made. The section does not lay down that a Civil Court may take cognizance of any cause of action other than a cause of action which would entitle a person to bring a suit in the Rent Court. It says "any dispute or matter." What was the dispute or matter in this case? It clearly was whether Ram Das and Raja Ram were the tenants of the holding from the zamindar or Dubri was the tenant of the holding from the zamindar. That was the actual dispute between the parties. This dispute Ram Das and Raja Ram are now attempting to revive in another form. They are making a distinction without a difference and are trying to bring identically the same matter up again. It is not certainly a question of *res judicata*. It might be possible to show that there was no bar by *res judicata*, but it is clearly an attempt to evade the provisions of a special Act. For the above reasons I decree the appeal and direct that the suit be dismissed. The plaintiffs respondents will pay their own costs and those of the appellant in all courts."

Mr. A. Sanyal, for the appellants.

Dr. M. L. Agarwala, for the respondent.

MEARS, C. J. and GOKUL PRASAD, J.:—The plaintiff brought a suit in the Revenue Court to eject the defendant as his sub-tenant. The suit was fought out up to the court of the Commissioner and it was held that the defendant was not a sub-tenant, but a tenant-in-chief paying rent to the zamindar.

After failing in the Revenue Court, the plaintiff instituted the present suit in the Civil Court for setting aside the decree

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of the Revenue Court above-mentioned and for the possession of the land in dispute.

The defendant's contention was that he was the chief tenant and that such a suit did not lie and was barred by the rule of *res judicata*.

The Munsif decreed the suit, holding that the Revenue Courts were not competent to decide the question that the defendant was the chief tenant and not a sub-tenant of the plaintiff, and the present suit, being between rival tenants, was one cognizable by the Civil Court. This decision was affirmed on appeal.

The defendant appealed to this Court and a learned Judge of this Court has allowed his appeal and dismissed the plaintiff's claim. No doubt it was the tendency of the Court in earlier cases to allow such suits to be brought in the Civil Court, but this view has now been departed from.

Mr. Justice PIGOTT has very clearly discussed and put the present point of view in *Baljit v. Mahipat* (1). We are in full agreement with his view. The plea of sub-tenancy has been heard and finally determined by the only court capable of entertaining it, and the present suit of the plaintiff to have the decision of the Revenue Court set aside must fail.

For these reasons we agree with the decision of the learned Judge of this Court and dismiss the appeal with costs.

Appeal dismissed.

Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Gokul Prasad.

BHOJ RAJ (PLAINTIFF) v. HARDEVA AND OTHERS (DEFENDANTS).*

1922
June, 6.

Act No. V of 1882 (*Indian Easements Act*), section 59—*Licence—Power to cancel licence—Licence for erection of thatched sheds not appurtenant to holding of licensee.*

Certain tenants, with the permission of their zamindar, erected some thatched sheds on waste land belonging to the zamindar. Neither the land nor the sheds were appurtenant to the tenants' agricultural holding. After these sheds had been in existence for some twenty years, the zamindari was sold to the plaintiff. *Held* that the plaintiff was not debarred from cancelling the licence in pursuance of which the sheds had been erected.

THIS was an appeal under section 10 of the Letters Patent from the judgment of a single Judge of the Court. The judgment under appeal was as follows:—

“The learned District Judge has found that the defendants have occupied the land in suit for more than 20 consecutive years for the purpose of tethering their cattle and have constructed cattle troughs and huts upon

* Appeal No. 61 of 1921, under section 10 of the Letters Patent.

(1) (1916) I. L. R., 41 All., 208.