

1922

JAINARAIN  
PANDE  
v.  
BHAGWAN  
PANDE.

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the said amount as above directed, the suit shall stand dismissed and the contesting defendants will get their costs from the plaintiffs appellants in all the courts.

*Appeal decreed.*

*Before Mr. Justice Ryves and Mr. Justice Stuart.*  
RAM JAS SINGH (PLAINTIFF) v. BABU NANDAN SINGH AND OTHERS  
(DEFENDANTS) AND MUSAMMAT RAJ KALI (PLAINTIFF).<sup>\*</sup>  
*Civil and Revenue Courts—Jurisdiction—Procedure—Revenue Court finding that plaint does not disclose a cause of action triable by such court.*

Where a Court of Revenue finds that on the facts stated in a plaint presented to it no case is disclosed triable by such a court, it should not merely dismiss the suit, but should order the plaint to be returned to the plaintiff for presentation in the proper court.

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

Munshi Harnandan Prasad, for the appellant.

Maulvi Iqbal Ahmad, for the respondents.

RYVES and STUART, JJ. :—This appeal arises out of the following circumstances:—The plaintiff filed his plaint in the Revenue Court, heading it as a suit under section 160 of the Agra Tenancy Act. He then set out in his plaint the allegations on which he asked for relief from the court. The Assistant Collector of the first class before whom the case came on for hearing was of opinion that the suit was not one under section 160 of the Agra Tenancy Act, but was a suit for contribution by one judgment-debtor against others for the excess share which he had paid. He held that he had no jurisdiction to decide this suit and dismissed it. No evidence at all was recorded. The plaintiff appealed to the learned District Judge and the first ground of appeal taken by him was that, even admitting the fact that the suit was not cognizable by the Revenue Court, the Revenue Court ought to have passed an order for the return of the plaint. The learned District Judge held that he could not decide the case as there were no materials on the record on which he could come to a decision. He held that section 197 of the Agra Tenancy Act was not mandatory, and under the circumstances he declined to interfere with the order of the court below and dismissed the appeal. In second appeal the plaintiff presses the third ground taken in his memorandum of appeal, namely that the court should have

<sup>\*</sup> Second Appeal No. 271 of 1921, from a decree of A. G. P. Pullan, District Judge of Benares, dated the 29th of November, 1920 confirming a decree of Saiyid Liaqat Husain, Assistant Collector, First Class of Jaunpur, dated the 7th of September, 1920.

returned the plaint for presentation to the proper court. It seems to us that the trial court could certainly have returned the plaint to the plaintiff on finding that it had no jurisdiction to try the suit, but did not do so. In the same way the appellate court, we think, could have done what the trial court could have done, and we think under the circumstances that this was the proper procedure for the court to have adopted. Under the circumstances we allow the appeal and direct the learned District Judge to order the plaint to be returned to the plaintiff for presentation to the proper court. The respondents will get their costs of this appeal.

*Appeal allowed.*

*Before Mr. Justice Stuart and Mr. Justice Kanhaiya Lal.*

ARJUN SINGH (DEFENDANT) *v.* MUSAMMAT PARBATI (PLAINTIFF).\*

*Civil Procedure Code (1908), section 144(2)—Suit for damages by a defendant to prior suit—Injury to property by reason of former suit—Costs no adequate compensation.*

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A dispute between the widow of a deceased Hindu and a person who alleged that he was the adopted son of the deceased was referred to arbitration. The arbitrator decided, *inter alia*, that half of the debts owed to the deceased should be assigned to the widow and half to the alleged adopted son. The latter took proceedings to set aside the award, in which he was successful in the first court, but on appeal the High Court restored the award. Meanwhile during the period in which the award, owing to the action taken by the alleged adopted son, remained in abeyance, several of the debts became time-barred. The widow then sued to recover special damages on this account:

*Held* that the damages incurred were of a special nature and could not be compensated by an order for costs alone. The suit was properly brought and was not barred by section 144 of the Code of Civil Procedure. *Quartz Hill Consolidated Gold Mining Co. v. Eyre* (1) referred to. *Mohini Mohan Misser v. Surendra Narayan Singh* (2) not followed.

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

Munshi Narain Prasad Ashthana and Pandit Shambhu Nath Chaube, for the appellant.

Mr. A. P. Dube, for the respondent.

STUART and KANHAIYA LAL, JJ. :—The facts of the suit out of which this appeal arises are these. Ganga Prasad Tiwari died in Mainpuri in 1911. He left a widow Musammat Parbati. Arjun Singh claimed to be his adopted son. Musammat Parbati set up that Arjun Singh was not the

\* Second Appeal No. 135 of 1921, from a decree of Shekhar Nath Banerji, District Judge of Mainpuri, dated the 13th of September, 1920 confirming a decree of Ragnunath Prasad, Subordinate Judge of Mainpuri, dated the 18th of July, 1918.

(1) (1889) L. R., 11 Q. B. D., 674.  
(2) (1914) I. L. R., 42 Calc., 550.