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was within his jurisdiction in determining whether or not sufficient cause had been shown by the plaintiff for his absence when the suit was actually called on for hearing. The question, however, in my opinion is very distinctly one for the consideration of this Court in the exercise of the powers of superintendence given it by the Provincial Small Cause Courts Act. If proceedings such as those now before me are upheld by this Court, in the absence of any representation as to the existence of exceptional circumstances warranting the said procedure, the practical result will be that this Court must acquiesce in the open disregard of the very proper rules which it has issued for the purpose of regulating the business of subordinate courts. Under the circumstances of the case this suit should, in my opinion, have been readmitted for hearing. I am even prepared to say that the learned Judge of the court below did, in my opinion, act in the exercise of his jurisdiction with material irregularity where, without any previous warning to the public and as I must presume, in the absence of any exceptional circumstances which could be pleaded as warranting such a course, he called on this particular suit for hearing after the hour of 5 p.m.

I allow this application and, reversing the order of the court below, direct that the suit in question be restored to the pending file of the Court of Small Causes at Cawnpore and set down for hearing according to law. The costs of this application will be costs in the cause.

Application allowed.

APPELLATE CIVIL.

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January, 16.

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

BECHU SINGH AND OTHERS (PLAINTIFFS) *v.* BALDEO SINGH AND OTHERS (DEFENDANTS.)*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 22—*Act No XII of* 1881 *(N. W. P. Rent Act), section* 9.—*Occupancy tenant—Inheritance—Succession to tenant dying before* 1902.

* Second Appeal No. 877 of 1920, from a decree of Lal Gopal Mukerji, Additional Judge of Allahabad, dated the 8th of January, 1920, confirming a decree of Abdul Halim, Subordinate Judge of Mirzapur, dated the 7th of August, 1918.

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BECHU SINGH v. BALDEO SINGH

One Ram Kirpal, the holder of an occupancy tenancy, died prior to the coming into force of the Agra Tenancy Act, 1901, and was succeeded in the tenancy by his widow After the death of the widow (the Act of 1901 being them in force) the reversioners of Ram Kirpal sued to eject her representative on the ground that they were the persons entitled to possession on the widow's death

Held that the claim was governed by the law as laid down in the North-Western Provinces Rent Act, 1881, and the plaintiffs were not entitled to succeed unless they could prove that they had shared with Ram Kirpal in the cultivation of the tenancy.

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

Babu *Piari Lal Banerji*, for the appellants.

Munshi *Haribans Sahai*, Dr. *Kailas Nath Katju* and Munshi *Kanhaiya Lal*, for the respondents.

RYVES and GOKUL PRASAD, JJ.:—The facts out of which this appeal arises are as follows:—One Ram Kirpal was an occupancy tenant of 31 bighas, 9 biswas. He mortgaged 14 bighas, 17 biswas, in 1896 and in 1897, that is to say, there were two mortgages, in favour of Sheonandan Singh. Ram Kirpal died before the present Tenancy Act came into force, that is before 1902, and he was succeeded in the tenancy by his widow Musammat Suneta. It appears that the rent for the years 1309 and 1310 Fasli fell into arrears and the zamindar brought a suit to eject Musammat Suneta and the mortgagees. This was decreed by the trial court and on the 16th of April, 1904, the zamindar got possession. Afterwards, however, on the 13th of September, 1905, the ejectment proceedings were quashed by the Board of Revenue and the possession of Musammat Suneta, or rather, she having died, that of Baldeo Prasad as her representative, was restored on the 13th of October, 1905. Thereafter the mortgagees in 1908 brought a suit against Baldeo Prasad to recover possession. That suit was compromised and according to the compromise it was agreed that the mortgage money was ascertained to be Rs. 600, and the mortgagees were given possession of some of the original mortgaged plots. In 1916 Baldeo Prasad redeemed the mortgage and recovered possession of the whole. This suit was brought in 1917 by the plaintiffs who alleged that they were members of a joint undivided family with Ram Kirpal

Singh at the time of his death 18 years ago, and also, apparently, that on the death of Musammat Suneta Kunwar they were the next reversioners. They pleaded in paragraph 10 of the plaint that the cultivatory holding in dispute was jointly held by Ram Kirpal Singh and the plaintiffs and the said land was jointly cultivated and the defendants had nothing to do with it and were in wrongful possession. They, therefore, prayed for possession of the mortgaged property on payment of Rs 600, the mortgage-money paid by the defendants. They also claimed mesne profits. The defendants denied that the plaintiffs were the next reversioners, or that they had been joint with Ram Kirpal Singh. They also denied that the plaintiffs were in joint cultivation of the land with Ram Kirpal Singh. They further pleaded that Ram Kirpal Singh had adopted defendant No 1 as his son. The trial court came to the conclusion that the plaintiffs and Ram Kirpal were not members of a joint Hindu family. It also found that the defendant No. 1 was not the adopted son of Ram Kirpal Singh. It was admitted in the trial court that the plaintiffs were the next reversioners to Ram Kirpal Singh. The court then went on to hold that as Ram Kirpal Singh had died before the present Tenancy Act came into force, the succession to the holding after the death of his widow would be governed by the provisions of the ordinary Hindu law, purporting to rely on the case of *Bisheshar Ahir* v. *Dukharan Ahir* (1). In the result the Munsif decreed possession to the plaintiffs on payment of Rs. 600 within three months from the date of his decree. Both parties went up in appeal. The learned Judge of the lower appellate court has confirmed the findings of the trial court on questions of fact involved in the case, but has held that the case of *Bisheshar Ahir* v. *Dukharan Ahir* (1) did not lay down that the proviso to section 9 of the Rent Act (XII of 1881) did not apply, and that the plaintiffs having failed to prove joint cultivation with Ram Kirpal Singh deceased were not entitled to succeed.

The plaintiffs come here in second appeal, and the contention urged by their learned vakil comes to this, that

(1) (1916) I. L. R., 38 All., 197

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having regard to a series of decisions of this Court the ordinary Hindu law had to be applied and not the old Rent Act (No. XII of 1881), and reference was made to the cases of *Bisheshar Ahir* v. *Dukharan Ahir* (1), *Bhup Singh* v. *Jai Ram* (2), and *Nathu* v. *Gokalia* (3). In our opinion none of these cases decides the point raised in this appeal. The question is whether in the case of a tenant who had died before the present Tenancy Act came into force, succession was to be governed under the new Tenancy Act. Having regard to the provisions of that Act it has been decided that the present Tenancy Act would have no retrospective effect so as to affect a succession to the holding of such a tenant But the point whether the succession to such a tenancy would be governed by Hindu law proper or by the Hindu law as modified by the Rent Act (No. XII of 1881) has not, so far as we know, been the subject of decision in any case in this Court.

In the case of *Bisheshar Ahir* v. *Dukharan Ahir* (1), the dispute was between the sons of two daughters who had succeeded their mother to an occupancy holding which had been left by their father who had died before the Tenancy Act came into force. The Judges in that case held that in cases where the Tenancy Act was silent the succession would be governed by the ordinary Hindu law. In that case the daughters' sons only became entitled to the tenancy after the death of the last surviving daughter, which happened long after the present Tenancy Act had come into force. Their rights did not come into existence on the death of the last full holder, the original tenant, their maternal grand father. That case, therefore, does not help us in the case now before us.

In the case of *Bhup Singh* v. *Jai Ram* (2) it seems to have been assumed or taken for granted that if the Tenancy Act (No. II of 1901) did not apply, succession would be governed by the Hindu law. Section 9 of the Rent Act 1881 does not seem to have been brought to the notice o

(1) (1916) I. L. R., 38 All., 197. (2) (1918) 16 A. L. J., 459.
(3) (1915) I. L. R., 37 All, 658.

the learned Judges who decided that case, and it certainly was not considered.

The case of *Nathu* v. *Gokalia* (1) is beside the point, inasmuch as in that case whether the Hindu law applied or section 9 of Act No. XII of 1881 applied, the result would have been the same. In that case, too, section 9 of Act No. XII of 1881 was not discussed.

In the present case it appears that the original tenant Ram Kirpal died before the Tenancy Act came into force. The succession to his estate was governed by Act No. XII of 1881 and a collateral could not inherit his property unless he was joint in cultivation with him. The plaintiffs founded their claim on the ground that they were members of a joint Hindu family with the deceased tenant and were as such interested in the cultivation. This issue has been found against them. It is true that there is no finding by the lower appellate court that they were not joint in cultivation with the deceased tenant. If the plaintiffs were not joint with Ram Kirpal, the whole fabric of their suit collapses. We do not see how they can claim a title to the tenancy. As we have stated above, the succession opened out to the estate of Ram Kirpal when the Rent Act of 1881 was in force. The actual possession of the plaintiffs, if they were then in existence, was merely postponed during the life-time of the widow: See *Dulari* v. *Mulchand* (2). If the widow had not been in existence they could not have succeeded unless they had a share in the cultivation. If they were not in existence at that time they could not certainly come in as reversioners who have shared in the cultivation. Their rights arose then and as their joint cultivation was based on the family being joint, which has been found against them, we think the lower appellate court was right in dismissing their suit. We, therefore, dismiss this appeal with costs.

Appeal dismissed.

(1) (1915) I. L. R., 37 All., 658. (2) (1910) I. L. R., 32 All., 314.