

1921

MAHADEO
SAHAJ
v.
THE
SECRETARY
OF STATE
FOR INDIA
COUNCIL.

decided. This application was in my opinion rightly rejected for the reasons already given. I would, therefore, dismiss this application with costs.

WALSH, J. :—I agree on the merits and I merely wish to add that in my view we could not have entertained this application on any ground, it not being a "case decided" within the meaning of the decision of the recent Full Bench (1), and that any previous decisions of this Court which have admitted revisions in the case of the rejection of an application to be allowed to sue *in forma pauperis* must be treated as having been overruled.

Application rejected.

APPELLATE CIVIL.

1921
December, 15.

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

SURJAN SINGH AND OTHERS (DEFENDANTS) v. CHATURA KUNWAR
(PLAINTIFF).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 201 (3)—Suit for profits—Plaintiff a recorded co-sharer at date of suit—Effect of decision of Civil Court against plaintiff's title post litem motam.

Where the decision of a suit in a Court of Revenue depends upon the determination of a question of title, the Court of Revenue is bound to follow the decision of a competent Civil Court on such question, even though that decision may have been come to while the suit in the Court of Revenue is in the stage of appeal. *Bhawani Singh v. Dilawar Khan* (2) followed.

THE facts of this case are fully stated in the judgment of RYVES, J.

Dr. Surendra Nath Sen and Babu Surendra Nath Gupta, for the appellants.

Babu Saila Nath Mukerji, for the respondent.

RYVES, J. :—Musammat Chatura Kunwar who was recorded in the khewat as a co-sharer brought the suit, out of which this appeal arises, under section 164 of the Agra Tenancy Act for her share of the profits for the years in suit against her deceased

* Second Appeal No. 1287 of 1919, from a decree of E. H. Ashworth, District Judge of Cawnpore, dated the 3rd of April, 1919, confirming a decree of Inayat Hussain, Assistant Collector, First Class of Cawnpore, dated the 15th of June, 1918.

(1) (1921) 1. L. R., 48 All., 564. (2) (1909) 1. L. R., 31 All., 253.

1921

 SURJAN
SINGH
v.
CHATURA
KUNWAR.

husband's brother, Baldeo Singh, the defendant appellant here. The main defence was that Lachhman Singh, the husband of Musammat Chatura Kunwar, was the brother of Baldeo Singh, defendant, and joint with him, that on the death of Lachhman Singh, Baldeo Singh had at the request of the plaintiff got her name entered in the revenue papers only for her consolation and that she had no proprietary right. The trial court refused to go into this question and gave the plaintiff a decree as her name was recorded in the khewat. The defendant appealed. During the pendency of the appeal the defendant filed a suit in the Civil Court and obtained a decree which declared that Musammat Chatura Kunwar was not a co-sharer. This decree was passed, it appears, on the strength of a compromise to which Musammat Chatura Kunwar was a party in a previous suit which was brought in 1899 for profits, in which she admitted that she was not a co-sharer and that her name was merely entered for maintenance and consolation. A copy of this decree was produced before the learned Judge of the lower appellate court. Thereupon he fixed two points for decision :—

(1) Was the lower court right in holding the plaintiff respondent to be a co-sharer and as such entitled to bring the suit ?

(2) If so, is this court nevertheless bound or entitled to upset the decision of the lower court on the ground that since the lower court's decree was passed the appellant has obtained a decree of a Civil Court declaring the respondent not to be a co-sharer ?

On the first point he held that the lower court was right in refusing to look at anything except the entries in the khewat, and on the second point, after considering two cases to which we shall presently refer, held that there was no ruling which went as far as to lay down that an appellate Revenue Court must pay regard to a declaration obtained after the decision of the case by the Revenue Court of first instance, and having come to the conclusion that at the time the Revenue Court had passed its decree the plaintiff was recorded a co-sharer, held that its decision was right. On appeal before us it has been argued that this case cannot be distinguished from the Full Bench case

1921

SURJAN
SINGH
v.
CHATURA
KUNWAR.

of *Bhawani Singh v. Dilawar Khan* (1). The only difference in the facts between that case and this lies in the circumstance that in that case an issue was remitted by the District Judge in whose court an appeal was pending. Before that issue could be decided, the defendant in that case brought a suit in the Civil Court for a declaration of his title and obtained a decree in his favour. He produced this decree before the Assistant Collector at the trial of the issue remanded to him, but that court refused to admit it in evidence. On appeal, although this decree was before the District Judge, he held that until the defendant had got the village records amended in his favour in accordance with that decree, no effect could be given to it in a suit of this nature, and that the defendants must pay profits according to the recorded shares as they then stood in the khewat. In principle it seems to me that that case cannot be distinguished from the present. In that case it was held, following a previous decision of this Court in *Durga Shankar v. Gur Charan* (2), that when as between parties to a revenue suit, a Civil Court of competent jurisdiction has decided the title to the property adversely to the plaintiff who claims profits, the Revenue Court is not competent to ignore that decision, and this Court decreed the appeal and remanded the case. On behalf of the respondent before us it has been argued that the decision of the majority of the Judges in the Full Bench case of *Durga Prasad v. Hazari Singh* (3) virtually overruled the decision in *Bhawani Singh v. Dilawar Khan* (1). A previous decision of this Court was expressly dissented from, but the case of *Bhawani Singh v. Dilawar Khan* (1) was not expressly dissented from, and there are observations in the concluding part of the learned Chief Justice's judgment on page 807 and in the judgment of Mr. Justice Banerji on page 813 which would suggest that it was not the intention of the Court to dissent from it. The case of *Bhawani Singh v. Dilawar Khan* (1) has been considered since in *Hargu Lal v. Med Singh* (4). The actual facts of that case were somewhat different. There, while a similar suit was pending in the Revenue Court, the defendant not only got a

(1) (1909) I. L. R., 31 All., 253.

(3) (1911) I. L. R., 33 All., 799.

(2) Weekly Notes, 1906, p. 1.

(4) (1915) 39 Indian Cases, 509.

1921

 SURJAN
 SINGH
 v,
 CHATURA
 KUNWAR.

Civil Court's decree declaring that the plaintiff was not entitled, but had got the revenue records corrected in accordance with the Civil Court's decree. Both lower courts dismissed the plaintiff's suit, which was, on appeal, decided by a Division Bench of this Court (BANERJI and RAFIQ, JJ). The Full Bench case of *Durga Prasad v. Hazari Singh* (1) was cited and it was argued that the Revenue Court should have decided the case on the entries in the revenue papers as they stood at the date of the suit. But the learned Judges relied on the case of *Bhawani Singh v. Dilawar Khan* (2) and held that that ruling governed the case then before them, and accordingly dismissed the appeal. Under these circumstances it seems to me that we are bound to hold that the case of *Bhawani Singh v. Dilawar Khan* (2) has not been overruled, and therefore must be applied in similar circumstances. I can see no ground for differentiating the facts of this case from the facts of that case, and that being so, it seems to me that we are bound by it. The result in my opinion is that this appeal must be allowed and the decree of the court below be set aside and the plaintiff's suit be dismissed in all courts with costs.

GOKUL PRASAD, J.:—I agree in the judgment of RYVES, J., and have nothing further to add except that in a case of this kind the order or decree of a Civil Court declaring the rights of the parties, if passed before the end of the litigation, must be followed. This is only consistent with the whole scheme of the Tenancy Act, according to which the Civil Court is the only court to decide questions of title, except in certain cases where the Revenue Courts are authorized to do so and are then to follow the procedure of Civil Courts, their decisions having the force of Civil Court decrees.

Appeal allowed.

(1) (1911) I. L. R., 33 All., 799.

(2) (1909) I. L. R., 31 All., 253.