

FULL BENCH.

Before Mr. Justice Kanhaiya Lal, Mr. Justice Daniels and
Mr. Justice Pullan.

1926
June, 8.

BALWANT SINGH AND ANOTHER (PLAINTIFFS) v.
SARABJIT AND OTHERS (DEFENDANTS).*

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 167—
Civil and revenue courts—Jurisdiction—Suit in revenue
court dismissed—Subsequent suit of a similar character
brought in a civil court.*

Plaintiffs sued in a court of revenue for ejection of defendants as being their sub-tenants. That suit was dismissed, the revenue court finding that defendants were not plaintiffs' sub-tenants, but were (or most probably were) joint occupancy tenants with the plaintiffs. Plaintiffs then sued in the civil court asking for ejection of defendants upon the ground that they themselves were entitled as occupancy tenants to exclusive possession of the land in suit.

Held by DANIELS and PULLAN, JJ., that the second suit was not maintainable, as it practically amounted to an attempt to circumvent the revenue court's decree. *Bechu Sahu v. Nandram Das* (1), *Ram Singh v. Girraj Singh* (2), *Fateh Singh v. Gopal Narain Singh* (3) and *Baljit v. Mahipat* (4), referred to.

Per KANHAIYA LAL, J., contra.—The former suit in the court of revenue was no bar to the present suit in the civil court, the former court not having exclusive right to determine the question at issue as between co-tenants. *Bhup v. Ram Lal* (5), *Jagan Nath v. Ajudhia Singh* (6); *Najib-ullah v. Gulsher Khan* (7), *Tursi v. Mohan* (8), *Mukh Ram v. Chajju* (9), *Ammar v. Govind* (10) and *Baljit v. Mahipat* (4), referred to.

* Second Appeal No. 1383 of 1923, from a decree of J. N. Mushran, Judge of the Court of Small Causes, Meerut, exercising the powers of a Subordinate Judge, dated the 12th of May, 1923, confirming a decree of Shah Wali Alam, Munsif of Baghpat, dated the 26th of February, 1923.

(1) (1914) 12 A.L.J., 902.

(3) (1925) I.L.R., 48 All., 88.

(5) (1911) I.L.R., 39 All., 795.

(7) (1909) I.L.R., 31 All., 348.

(9) (1919) 17 A.L.J., 643.

(2) (1914) I.L.R., 37 All., 41.

(4) (1918) I.L.R., 41 All., 208.

(6) (1912) I.L.R., 35 All., 14.

(8) (1916) 35 Indian Cases, 302.

(10) (1925) I.L.R., 47 All., 616.

1926

BALWANT
SINGH
v.
SARABJIT.

THE facts of this case are as follows :—

The plaintiffs first sued in a court of revenue to eject the defendants from certain land upon the ground that the defendants were their sub-tenants. The defendants denied that they were sub-tenants of the plaintiffs and pleaded that they were co-occupancy tenants of the land in suit. The court of revenue found that the defendants were not the plaintiffs' sub-tenants, but were in all probability co-tenants with them. It accordingly dismissed the suit.

The plaintiffs then brought the present suit in a civil court similarly seeking to eject the defendants. They pleaded that they themselves were the occupancy tenants of the land in suit, that the defendants had no concern with the occupancy rights in the said plots, and that they were wrongfully denying the exclusive title of the plaintiffs and setting themselves up as their co-tenants.

The defendants asserted that they were partners in the occupancy holding of the plots in question with the plaintiffs, that the plots had been partitioned privately, and that the suit was barred by section 11 of the Code of Civil Procedure. They further pleaded that the suit was not maintainable and that the plaintiffs had no cause of action. The trial court did not go into the merits of the claim. It dismissed the suit on the preliminary ground that the decision of the revenue court in the previous case operated as a bar to the present suit and that the claim was also barred by section 167 of the Agra Tenancy Act. This decree was affirmed by the lower appellate court. The plaintiffs appealed to the High Court.

Dr. *Kailas Nath Katju*, for the appellants.

Mr. *P. N. Sapru* and *Munshi Binod Behari Lal*, for the respondents.

1926

BALWANT
SINGH
v.
SARABJIT.

On the question whether the second suit was maintainable the appeal was referred to a Bench of three Judges.

The judgement of KANHAIYA LAL, J., after stating the facts as above, thus continued:—

The plaintiffs now seek to establish that they are the sole occupancy tenants of the said land. They do not contest the finding of the revenue court that the defendants were not holding the land in dispute as their sub-tenants. They seek to eject them as persons wrongfully claiming to be co-tenants of the occupancy holding with the plaintiffs. The question for consideration is whether, after the decision of the revenue court such a suit is maintainable in the civil court.

The Tenancy Act is mainly designed to regulate the relations between landlords and tenants, or between persons who hold such relationship by operation of law, mortgage, transfer or otherwise. The Act also provides for the devolution of tenancies and places some restrictions on the rights of tenants to transfer their holdings. But the object of those provisions again is to regulate the relations between the landlord and the persons claiming to be successors to the holding or transferees from the tenants. There are certain provisions which give the revenue court the power to pass a decree in certain circumstances which would operate as a decree of a civil court. But subject to those provisions the suits referred to in section 167 of the Agra Tenancy Act other than suits between co-sharers, are mainly suits intended to regulate the rights of landlords and tenants *inter se*.

In the suit filed by the plaintiffs against the defendants in the revenue court the only question for

1926

BALWANT
SINGH
v.
SARAJIT.Kanhaiya
Lal, J.

consideration before the revenue court was whether the defendants were sub-tenants of the plaintiffs, and since that matter was one which the revenue court was competent to decide and had in fact an exclusive jurisdiction to determine, the finding of the revenue court on that matter must be treated as final and conclusive so far as it negatived the existence of such relationship. When the revenue court, however, went further to say that in all probability the parties had divided the holdings and that the defendants were co-tenants with the plaintiffs in the occupancy right, it came to a decision which was not conclusive so far as the exclusive rights claimed by the plaintiffs to the occupancy holdings in the present suit are concerned, and the cognizance of this suit cannot, therefore, be regarded to that extent as excluded by the decision of the revenue court.

No question of *res judicata* really arises, because the decision of a revenue court, not competent to try the subsequent civil suit, cannot be set up as *res judicata* unless by express enactment the former is given the force of a civil court decree. The exclusive jurisdiction conferred by section 167 of the Agra Tenancy Act stands on a different footing. Where the revenue court has an exclusive jurisdiction to determine the question of tenancy or sub-tenancy, as between persons claiming to be landlord and tenant, the decision of the revenue court on that matter is final and excludes the re-opening of the same matter in the civil court. Had the revenue court exclusive jurisdiction to determine the question of the co-tenancy as between the parties to the present suit, the decision of the revenue court thereon would similarly be final and exclude the re-opening of the same matter in the civil court. But the revenue court had no

1926

BALWANT
SINGH
T.
SARAJIT.Kankhiya
Lal, J.

jurisdiction to decide any claim to or question relating to an alleged co-tenancy or exclusive right between rival claimants to an occupancy holding. It may incidentally, in deciding the question of sub-tenancy, go into that matter, but any opinion that it might express on that point can hardly be regarded as substantially and directly necessary to enable it to come to a final decision on the question of the sub-tenancy itself.

As pointed out in *Bhup v. Ram Lal* (1) and *Jagan Nath v. Ajudhia Singh* (2), a question of title to a tenancy arising between rival claimants to that tenancy is a question which is cognizable by a civil court. On the same principle a question between rival claimants by succession to an occupancy holding has been held to be within the competence of the civil court—*Najibullah v. Gulsher Khan* (3).

If the revenue court decides that there was a relationship of landlord and tenant between the parties, any attempt to circumvent that decision or re-open the same subject-matter by a suit in the civil court would obviously be open to the objection that the decision of the revenue court, affirming the existence of such relationship, prevents that matter from being agitated again in any form in the civil court. But if the finding of the revenue court happens to be that no such relationship exists, it is open to each party to fall back upon such other title as he might claim and get it determined by the proper court. In *Tursi v. Mohan* (4), where, in a previous suit for ejectment the parties came to terms and a decree was passed whereby the defendant became entitled to hold the land for five years, and subsequently in another suit for ejectment it was held by the Board of Revenue

(1) (1911) I.L.R., 33 All., 795.

(2) (1912) I.L.R., 35 All., 14.

(3) (1909) I.L.R., 31 All., 348.

(4) (1916) 35 Indian Cases, 302.

that the defendant was not a sub-tenant, it was held by this Court that a suit brought by the plaintiff for the ejectment of the defendant as a trespasser was cognizable by the civil court. In *Mukh Ram v. Chajju* (1), where a suit was brought by the plaintiff in the revenue court, alleging that the defendant had got his name entered without his consent and prayed for his ejectment as a tenant it was held that a subsequent suit brought by the plaintiff for the ejectment of the defendant, after the former suit had failed, was not barred by the rule of *res judicata* or excluded from the cognizance of the civil court. In *Ammar v. Govind* (2), where a suit for arrears of rent was brought by the plaintiff against the defendant, alleging that the latter was his sub-tenant, in the revenue court, and a cross suit was filed by the latter against the former in the civil court for a declaration of his title as a joint occupancy tenant of the lands in dispute with the former, it was held that the suit filed by the latter was maintainable. The main ground upon which that judgement proceeded was that no suit of the character then before the court was included in the schedule referred to in section 167 of the Agra Tenancy Act, and that a suit between persons claiming to be co-tenants could only be entertained by the civil court.

The learned Counsel for the defendants has referred to the decision in *Baljit v. Mahipat* (3), but no differentiation seems to have been there made between a question of sub-tenancy and a question of alleged co-tenancy or rival claims to an occupancy holding and both were treated alike as matters which the revenue court was exclusively competent to determine. A question of sub-tenancy may be excluded by

1926

BALWANT
SINGH
v.
SARAJIT.Kanhaiya
Lal, J.

(1) (1919) 17 A.L.J., 646.

(2) (1925) I.L.R., 47 All., 616.

(3) (1918) 41 All., 203.

1926

BALWANT
SINGH
v.
SARABMIT.*Kankaiya*
Lal, J.

the decision of the revenue court, but if the alleged sub-tenancy is negatived there is no reason why the determination of any other question of title, arising on the finding that no such sub-tenancy existed, should be excluded from the determination of the civil court.

It is useful in this connection to refer by way of analogy to section 34 of the Agra Tenancy Act. That section provides that a person occupying land without the consent of the landholder shall be liable for the rent of that land at the rate payable in the previous year, or, if no rent was payable in the previous year, at such rate as the court may determine to be fair and equitable. A person who thus takes possession of land without any right can be charged with a fair amount of rent for the occupation of the land. If the landlord chooses to accept him as a tenant he can sue him for the recovery of rent at such rate as the court may determine, and he can even proceed against him by ejectment, treating him as such a tenant. But if the revenue court finds that he has been in possession without the consent of the landholder under an adverse right and cannot be made liable for rent under that provision by reason of the length of his occupation or otherwise, it is open to the landholder to fall back upon his title and to sue for his ejectment in the civil court, though he had elected in the previous proceeding to treat him as a tenant; and the decision of the revenue court, determining that the person occupying the land was not liable to rent, whatever may be the ground on which it may be based, would not bar the determination of the matter in the civil court. Section 202 of the Agra Tenancy Act affords a similar analogy where a reference is made by a civil court in a suit in which a tenancy is set up by the defendant and the finding of the revenue court on such reference is that no such tenancy exists.

Section 167 of the Agra Tenancy Act is limited to the subject-matter of the suits referred to in that section, but the subject-matter before the revenue court in the present instance was the question of the alleged sub-tenancy, and though the finding on that matter may be conclusive as between the parties to that proceeding for the purpose of the revenue court, that finding if it does not affirm the tenancy, does not bar the determination of any other rights claimed by the parties *inter se* in respect of the holding in question.

It is urged on behalf of the defendants respondents that the plaintiffs are trying to circumvent the decision of the revenue court by seeking to set up an exclusive right to the occupancy holding in question in contravention of that finding. But the plaintiffs are entitled to circumvent, nay discard, the decision of the revenue court, if the revenue court goes beyond the question of sub-tenancy which it had an exclusive right to determine and determines a question as to co-tenancy which it has no such exclusive right to decide.

The plaintiffs virtually abide by the finding of the revenue court that no sub-tenancy existed between them and the defendants. They do not mention in the plaint that the defendants are still their sub-tenants. They do not seek to eject them as such. They seek to eject them as rival claimants to the occupancy holding or as persons who are denying their exclusive title to the occupancy holding, and as such the determination of that matter falls outside the scope of the subject-matter of the suits referred to in section 167, and is not barred from the cognizance of the civil court.

It can hardly be argued that the plaintiffs want to eject the defendants still as sub-tenants, for the cause of action alleged in the plaint is the denial by

1926

BALWANT
SINGH
v.
SARABJIT.Kanhaya
Lal, J.

1926

BALWANT
SINGH
v.
SARABIT.

the defendants of the exclusive right of the plaintiffs to the occupancy holding in question and the defendants themselves have understood the claim, as stated in their own written statement, as a claim brought against them for their ejection as trespassers. The valuation of a suit by the plaintiff can hardly afford any real indication as to the nature of his claim, especially where the claim is, as here, not for possession of a proprietary right in the land but only for the possession of a tenant right valued at the annual rent assessed on the occupancy holding, as distinct from the sub-tenancy.

The appeal, therefore, ought, in my opinion, to be allowed and the suit remanded to the trial court for decision on the merits.

DANIELS, J. :—The plaintiffs in this case sued the defendants in the revenue court for ejection as their sub-tenants. The revenue court dismissed the suit on the ground that the defendants were not sub-tenants but joint occupancy tenants with the plaintiffs. This decision was upheld by the Commissioner in appeal. The plaintiffs then brought the present suit in the civil court for the ejection of the defendants. The question is whether the suit is maintainable. The question of law which has led to this appeal being referred to a Bench of three Judges is whether it is open to a plaintiff, whose suit for ejection of the defendants as his sub-tenants has been rejected by the revenue courts on a finding that they were co-tenants, to come to the civil court and sue for their ejection as trespassers. On the pleadings in this case that general question does not really arise. The plaintiffs, as the learned Munsif pointed out, nowhere in their plaint asserted that the defendants were trespassers, or if so, when they became such. They

nowhere asserted that they entered upon the holding unlawfully or without their consent. Their plaint is nothing more or less than an attempt to get behind the decision of the revenue court on the question of sub-tenancy. In paragraph 1 the plaintiffs assert their own occupancy rights. In paragraph 2 they deny that the defendants have any concern with the occupancy rights in the holding. The plaint carefully refrains from saying that the defendants have no concern with the holding itself. The same paragraph then refers to the revenue suit, states that the defendants wrongfully alleged themselves to have occupancy rights and denied the plaintiffs' right and concludes by saying that the revenue court, "thinking that the relationship of zamindar and tenant was not proved" dismissed the plaintiffs' claim. The suggestion appears to be that this was an erroneous view on the part of the revenue court. Paragraph 3 runs as follows:—

"The act of the defendants is altogether improper and they want to take an undue advantage of the friendship. Now, the defendants want to snatch away the plaintiffs' occupancy holding which is likely to jeopardize the rights of the plaintiffs. The plaintiffs asked the defendants several times to leave the land but they did not hear. The plaintiffs are obliged to sue."

The suggestion here appears to be that the defendants have taken advantage of the plaintiffs' kindness in allowing them to cultivate the land by wrongfully asserting an occupancy right to which they are not entitled and thereby injuring the plaintiffs' rights. There is no suggestion that the defendants entered on the land unlawfully. Their improper

1926

 BALWANT
SINGH
v.
SARAJIT.

Daniels, J.

1926

BALWANT
SINGH
v.
SARAJIT.

act was the assertion of occupancy rights. In paragraph 4 the cause of action is said to have arisen when the defendants denied the plaintiffs' right. As to this it is well established that the denial of his landlord's title by an agricultural tenant does not convert him into a trespasser—*Bechu Sahu v. Nandram Das* (1). Finally, in paragraph 6, the suit is valued at one year's rent as in the case of a suit for ejectment under section 58 of the Tenancy Act and not as a suit for possession against a trespasser under section 7(v) of the Court Fees Act. Reading the plaint as a whole the suit is nothing more than an attempt to obtain from the civil court a reversal of the decision of the revenue court in a matter within its exclusive jurisdiction and it is now established beyond the possibility of doubt that no such suit will be entertained by the civil court. I need only refer among numerous other cases to the case of *Ram Singh v. Girraj Singh* (2), and the recent Full Bench case of *Fateh Singh v. Gopal Narain Singh* (3).

I would, therefore, dismiss the appeal with costs.

PULLAN, J. :—The question whether a tenant who has sued to eject a sub-tenant in the revenue court, and failed on the ground that the defendant is a joint tenant, can bring a fresh suit in the civil court, has given rise to conflicting decisions in this Court. I do not propose to attempt to reconcile those decisions for, in my opinion, they are irreconcilable. The reason for the conflict is that there are two principles which the courts have followed, and these two principles are bound to clash. The first is the principle underlying the whole tenancy law that the determination of tenants' rights is a matter for the

(1) (1914) 12 A.L.J., 902.

(2) (1914) I.L.R., 37 All., 41.

(3) (1925) I.L.R., 48 All., 88.

decision of the revenue courts, and the second is the principle that the rights of tenants *inter se* must be determined by the civil courts.

1926

BALWANT
SINGH
v.
SARABJIT.

The decision of the present case depends on whether the former or the latter principle should be applied. At the conclusion of the suit in the revenue court the plaintiffs were faced with the position that the defendants could not be ejected from a portion of the occupancy tenancy, and would, unless the civil courts could be successfully invoked, remain on that portion of the holding with rights in no way inferior to those of the plaintiffs. We are not asked to consider that the decision of the revenue court operates as *res judicata*, and I am not prepared to say that no suit could have been brought by the plaintiffs in a civil court to establish their rights as against those of the defendants. But what I am prepared to find is that the suit as actually brought is one which is barred by section 167 of the Tenancy Act. This appears from the plaint itself. Omitting the irrelevant allegations as to motive the plaint may be re-stated as follows. (1) The plaintiffs are occupancy tenants of the land in suit. (2) The defendants have no occupancy rights in the land in suit, but refuse to give up possession relying on a decision of the revenue court. (3) The relief sought is ejectment. The cause of action is said to have arisen when the plaintiffs' right was denied in the revenue court, and the court fee is that prescribed for a suit for ejectment of a tenant holding over.

Pullan, J.

This is nothing more nor less than a second ejectment suit, and although the defendants are not described as sub-tenants, they are certainly not described in any other definite manner. This is not an attempt to obtain a judicial decision as to the rival claims of

1926

BALWANT
SINGH
v.
SARABIT.

two tenants, but to eject in the civil court the parties whom the revenue court has refused to eject on precisely the same grounds.

The first suit was one exclusively cognizable by the revenue court, and the second suit is in reality indistinguishable. It is the true object of the suit which must be considered in order to decide in what court it should be heard, and the true object of this suit was to eject the defendants, who had already been treated by the plaintiffs as sub-tenants, and who are still in fact treated as sub-tenants.

In his judgement in the reported case *Baljit v. Mahipat* (1), Mr. Justice PIGGOTT suggests that there is some defect in the Tenancy Act which might be removed by further legislation. One possible remedy would be to extend the right of appeal to the District Judge to cases where the revenue court of first instance has found that there is a co-tenancy.

As the law stands I am of opinion that this suit was barred by section 167 of the Tenancy Act, and agree with the order proposed by Mr. Justice DANIELS.

BY THE COURT.—In view of the opinion of the majority, this appeal is dismissed with costs.

Appeal dismissed.