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We accordingly allow the appeal in part and modify the decree of the court below by ordering (1) that the property situated in village Faizabad be put to sale first, and the sale proceeds thereof shall be wholly paid to the decree-holder and shall in no circumstances be paid to the defendants, and (2) that in case the property of the village of Faizabad be not sufficient to satisfy the decree, then the 23 sihams out of 44 sihams of the town of Gulauthi, which were mortgaged in the mortgage deed in suit, shall be put to sale, and out of the sale proceeds of these sihams the amount of $\frac{23}{44}$ of Rs. 3,665-13-6 will first go to defendants Nos. 11 to 14 and the remainder will go to satisfy the decree, and the surplus, if any, will go to the other defendants. Parties will bear their own costs in this Court.

Before Mr. Justice Niamat-ullah and Mr. Justice Bennet.

JOHARI MAL AND ANOTHER (PLAINTIFFS) v. BALMAKUND AND OTHERS (DEFENDANTS).*

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*Act (Local) No. II of 1901 (Agra Tenancy Act), section 146—
Distraint—Misappropriation of crops—Suit for compensation—Jurisdiction—Civil and revenue courts.*

A suit by a tenant for recovery of the value of crops, on the allegations that the landlord had distrained and then misappropriated them and had thereafter obtained a decree for the arrears and realized it from the tenant by execution, is not a suit within the purview of section 146 of the Agra Tenancy Act, 1901, and is cognizable by the civil court.

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

Dr. N. C. Vaish, for the respondents.

* Second Appeal No. 1891 of 1927, from a decree of Ganga Prasad Varma, Subordinate Judge of Bulandshahr, dated the 21st of April, 1927, confirming a decree of Ratan Lal, Munsif of Khurja, dated the 23rd of October, 1926.

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NIAMAT-ULLAH and BENNET, JJ. :—This appeal arises out of a suit brought by the plaintiffs appellants in the court of the Munsif of Khurja for recovery of Rs. 1,600, being the value of the crops which the defendants first party (defendants Nos. 1 and 2) are alleged to have misappropriated. Defendant No. 1 is the landlord of the holding of which one Lahori is the occupancy tenant. Plaintiff No. 1 (Johari Mal) is the sub-tenant holding it from the latter. Plaintiff No. 2 and defendants second party (defendants Nos. 3 and 4) cultivated the land in 1332 F. under a *batai* arrangement with the plaintiff No. 1. Rent having fallen in arrears in 1332 F., the defendant No. 1 distrained the *rabi* crops on the 19th of March, 1925, and appointed his servant, defendant No. 2, as the *shehna*. The plaintiffs' case is that on the 7th of April, 1925, the crops were taken away by the defendants first party, who misappropriated the same, and that sometime afterwards the defendant No. 1 obtained a decree for arrears of rent which the plaintiff No. 1 had to satisfy to avoid a threatened arrest in execution of that decree. It is also mentioned in the plaint that plaintiff No. 1 filed a complaint in the criminal court, presumably charging the defendants first party with the offence of criminal misappropriation; but it was unsuccessful. The defence, so far as it is material to notice, was that the plaintiff No. 2 and the defendants second party, in collusion with plaintiff No. 1, dishonestly carried away the crops in spite of distraint, that the suit is cognizable only by the revenue court and that it is barred by limitation.

The suit has been thrown out by both the lower courts on the ground that it is within the exclusive jurisdiction of the revenue court. The plaintiffs appeal to this Court.

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It should be noticed that the lower courts dismissed the suit instead of returning the plaint for presentation to the revenue court, as should have been done. The reason assigned by the lower appellate court for this course is that the suit, if instituted in a revenue court, would be time-barred. If the civil court has no jurisdiction to entertain the suit, it has none to decide the question of limitation, nor is it open to the civil court to decide the question of limitation for the revenue court in anticipation. The plaint should have been returned for presentation to the proper court, leaving it to the plaintiffs to present it before the revenue court or not, as they may be advised. The order of the lower court must be modified to that extent in any view of the case.

On the main question arising between the parties, viz., whether the civil court has jurisdiction to entertain a suit of this character, it cannot be disputed that a civil court has such jurisdiction unless it is excluded by some rule of law. The lower courts have held that the present suit is one of those which are declared by section 167, read with schedule IV, Group (A), No. 6, and section 146 of the Tenancy Act, II of 1901, to be exclusively cognizable by the revenue court. If it is a suit of the description given in section 146, there can be no doubt that the courts below were right. Bearing in mind the allegations contained in the plaint which attributes to the defendants first party a criminal misappropriation of the crops,—I interpret it in that sense—it will be found that the suit is not within the purview of section 146. That section runs as follows:—

“If any person under colour of this Act distrains or sells, or causes to be sold, any property otherwise than according to the provisions of this Act,

or if any distrained property is lost, damaged or destroyed by reason of the distrainer not having taken proper precautions for the keeping and preservation thereof,

or if the distraint is not immediately withdrawn when it is required to be withdrawn by any provision of this Act,

the owner of the property may institute a suit against the distrainer for compensation for any injury which he has thereby sustained.

If the distrainer is an agent or servant, his principal may be joined as a defendant in the suit."

The sale referred to in the section is what must follow every distraint and should be made in the manner laid down by the Act (see section 128 *et seq.*). If the distrainer sells it in any other manner, he can be sued before the revenue court for damages arising out of such an irregular sale. The present suit does not complain of any sale and is obviously not covered by the first paragraph of the section. The plaintiffs do not likewise complain that the crops were "lost, damaged or destroyed by reason of the distrainer not having taken proper precautions". The second paragraph which clearly contemplates a case of negligence on the part of the distrainer and the damages arising therefrom cannot be so construed as to include the case of deliberate misappropriation, as is alleged in the present case. That part of the section, therefore, does not apply. The lower appellate court considers the third paragraph to be applicable, because subsequently a decree for rent was obtained and satisfied by the plaintiffs. It argues that "there is a provision that if a distraint is not immediately withdrawn when it ought to be legally withdrawn, then a suit for compensation for any injury sustained by the owner of the property against the distrainer is covered

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by this section. When a distraint is legally withdrawn the distrainer is bound to place the distrained property in the custody of its owner and if he fails to do that, i.e., if he fails to restore the property, the owner of the property can sue under this section." I cannot accept this reasoning, which is based on a distorted view of the plain language employed in the section. It provides for a case where the property is under distraint and continues to be so when it ought to be withdrawn. In the case before us the plaintiffs allege—and we must accept their allegation in determining the question of jurisdiction—that the crops were misappropriated shortly after distraint, that sometime afterwards a decree for arrears of rent was obtained and execution of that decree was applied for by arrest of the plaintiffs (see paragraph 9 of the plaint). If their case is true, there was no property left and no subsisting distraint which could be withdrawn at the time the decree was satisfied. It should be remembered that the crops under distraint are to be stored by the cultivator or, if he neglects, by the distrainer "in some convenient place in the neighbourhood" (see section 124), so that, when the distraint is withdrawn, the crops can be physically available to the cultivator. It is also relevant to refer to section 128, which requires the distrainer to take steps for sale through the sale officer within five days after distraint. It is clear to my mind that the plaintiffs' suit is not for compensation for injury sustained by them in consequence of the distraint not having been withdrawn when the law required it to be withdrawn. It is not permissible for a court to disown jurisdiction by assigning to the suit a character which it was not intended by the plaintiffs to have and which cannot be assigned to it without resorting to a far fetched theory

not based on the allegations contained in the plaint and on a proper consideration of the entire frame of the suit. There is no other provision in section 146 which gives jurisdiction to the revenue court in respect of a suit of this character. We must give effect to the law according to the plain meaning of the language employed, and should not consider whether it would be more expedient to have a suit of this kind tried by a revenue court. It is not difficult to discern the line of demarcation between the jurisdictions of civil and revenue courts in this respect. The Tenancy Act permits distraint under the supervision of the revenue court. Any irregularity in following the procedure laid down by the Act in that behalf and the injury resulting from such irregularity may well be left to be dealt with by the revenue court; but the broader questions arising in actions based on tort are not excluded from the jurisdiction of the civil court, which is more competent to deal with them.

For the reasons stated above, we are of opinion that the suit of the plaintiffs as framed was rightly instituted in the civil court. We set aside the orders of the courts below and direct the court of first instance to entertain the suit instituted by the plaintiffs and proceed to try it according to law.

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