1929

EJAZ AHMAD v. SAGHIR BANO.

terests of different parties had to be ascertained, the decree passed in the case cannot be ignored by a party afterwards in a suit that he may institute in spite of the previous ascertainment of shares.

The learned advocate for the appellant has strenuously contended before us that the case of *Muhammad Ahmad* v. *Zahur Ahmad* (1), and the case of *Gangaram Balkrishna* v. *Vasudeo Dattatraya* (2), lay down that there can be no *res judicata* where there was no conflict between the defendants *inter se*. On an examination of the two cases it is clear that there the issue in the second case was not identical with the issue that had to be decided in the previous case to give relief to the plaintiff. We are therefore of opinion that there is no force in this appeal and we dismiss it with costs.

FULL BENCH.

Before Mr. Justice Sulaiman, Mr. Justice Mukerji and Mr. Justice Banerji.

SAHDEO (PLAINTIFF) *v.* BUDHAI AND OTHERS (DEFENDANTS).* 1929 *April*, 5.

Act (Local) No. III of 1926 *(Agra Tenancy Act), sections* 99, 121 *and* 230—*Suit between co-tenants for declaration and joint possession—Jurisdiction—Civil and Revenue courts.*

A suit for a declaration that the plaintiff, jointly with the defendants, is a co-tenant of a certain holding, and for joint possession thereof, is cognizable by the revenue court and not by the civil court.

So far as the suit is one for the declaration claimed, it falls within section 121 of the Agra Tenancy Act, 1926, inasmuch as the defendants, who are admittedly tenants, are persons claiming to hold through the landholder. Regarding the relief for possession the suit falls within the scope of section 99, for the same reason. It is not necessary, for the

* Miscellaneous Case No. 1112 of 1928.

(1) (1922) I. L. R., 44 All., 934. (2) (1922) I. L. R., 47 Bom., 534.

1929

SAHDEO v. BUDHAI.

purpose of those sections, that the defendants must set up a case of a special grant by or special contract with the landholder, or a subsequent recognition by him of their title, coupled with a denial of the plaintiff's title.

A suit falling under section 99, and a suit falling under section 121, being specified in the fourth schedule of the Act, section 230 bars the cognizance of the present suit by the civil court.

Ram Partab v. *Chhotey Lal* (1), followed.

THIS was a reference by the Munsif of Allahabad under section 267 of the Agra Tenancy Act, III of 1926. It was first heard by a Bench of two Judges, who referred it to a larger Bench. The facts are fully set forth in the referring order, which was as follows :—

SEN and NIAMAT-ULLAH, JJ. :—This is a reference by the learned Munsif of Allahabad under section 267 of the Agra Tenancy Act (Act III of 1926).

The facts of this case have been set out in detail in the order of reference. The property in dispute is an occupancy holding which at one time was in the occupation of Daulat, Sheo Sahai, Ram Sahai, Jamna, Sheo Ambar, Kalu and Pancham. Upon the death of Pancham the holding vested in the remaining six persons. The defendants Nos. 1 and 2 are alleged to be the heirs of Ram Sahai and Sheo Sahai, and defendant No. 3 as that of Jamna and Kalu. The plaintiff, claiming to be the son of Daulat, sued in the civil court for a declaration that he was the tenant of the holding jointly with the defendants Nos. 1 to 3. In the alternative he prayed for joint possession. The defendants denied the plaintiff's title and contended that the holding belonged exclusively to the defendants Nos. 1 to 3 through their ancestors and that the plaintiff was not entitled to the declaration asked for.

The suit had originally been instituted in the court of revenue, and upon a question of jurisdiction being raised, the plaint was returned for presentation to the proper court. This led to the institution of the present suit in the court of the Munsif of Allahabad.

The learned Munsif is of opinion that the suit as brought is within the exclusive jurisdiction of the court of revenue.

(1) (1928) 26 A. L. J., 431.

He relies upon section 121 of the Tenancy Act, which provides that any tenant may bring a suit for declaration of his rights as a tenant as against the landlord or any person claiming through him. There can be no doubt that the defendants denied the title of the plaintiff as a tenant and set up an exclusive title in themselves. The learned Munsif is of opinion that where a person claims to be the sole tenant of a holding he must be deemed to be claiming through the landlord, and reliance has been placed upon a decision of this Court in *Ram Partab* v. *Chhotey Lal* (1). This decision supports the view of the learned Munsif and contains the followed pronouncement :—

"It is provided by section 99 of the Agra Tenancy Act that any tenant . . . . ejected from or prevented from obtaining possession of his holding or any part thereof otherwise than in accordance with the provisions of this Act by . . . . any person claiming through . . . . landholder . . . whether as tenant or otherwise, may sue the person so ejecting him or keeping him out of possession for possession of the holding. In the present case it is clear from the allegations contained in the plaint that the plaintiff's case was that the defendant was keeping him out of possession of his share in the plot in dispute, and in so doing was setting up a right of tenancy in himself. There can be no room for doubt that by asserting sole title in himself as a tenant to the plot in dispute the defendant claimed through the landholder. In other words the defendant maintained that he was the sole tenant of the plot in dispute on behalf of the landholder. In view of these allegations contained in the plaint there is no escape from the position that the case came within the purview of section 99(1) (*b*) of the Agra Tenancy Act and was cognizable by the revenue court. As stated above, the plaintiff asked not only for a decree for joint possession, but also claimed a declaration of his right as a tenant of a portion of the area of the plot in dispute. A suit for a declaration of that nature filed by the plaintiff comes within the purview of section 121(1) of the Tenancy Act, and the jurisdiction of the civil court to try such a suit is barred. It is clear that the plaintiff's case was that the defendant in setting up a right in himself as the sole tenant of the plot in dispute was claiming to be a tenant

(1) (1928) 26 A. L. J., 431.

1929

SAHDEO v. BUDHAI.

on behalf of the landholder, and therefore, he was a person claiming to hold 'through the landholder.' ".

A suit under section 99 or section 121 of the Tenancy Act is exclusively cognizable by the court of revenue. The question which calls for determination is whether the suit now instituted in the civil court comes within the purview of one or other of the aforesaid sections. This would depend upon the frame of the suit, the nature of the relief and in particular upon the status of the defendant or defendants, having regard to the pleadings.

The defendants deny the title of the plaintiff and claim an exclusive title to the holding. The plaintiff does not impugn the title of the landlord and his title is not directly or indirectly in issue. Indeed, there is no question of proprietary title involved in the case between the plaintiff on the one side and the landlord or a person claiming through him or on his behalf on the other side. The pleadings in the suit are clear and decisive. It is necessary for the proper determination of the question of jurisdiction that the parties should be held fast to their pleadings. A defendant may be said to claim through the landlord where his claim is urged either on the basis of a grant from the landlord or of a special contract as a lease by the landlord to him. It is doubtful whether in the absence of a grant or a special contract the mere recognition of the title of the defendant by the landlord, coupled with a denial of the plaintiff's title, would fulfil the requirements of section 99 or 121. In the present case no grant or special contract has been pleaded, nor has it been suggested that the pretensions of the defendants are favoured by the landlord or are supported by the might of his authority. The pleadings, therefore, are not helpful to the defendants in ousting the jurisdiction of the civil court, which in the absence of a statute to the contrary is the only court competent to try a declaratory suit between rival tenants. The determination of their rights depends in a large measure upon the application of section 24 of the Tenancy Act. The title of either party is based upon statute. The question of statutory succession is independent of the volition of the landholder and does not rest upon grant, special contract or recognition of the landholder. It has, however, been ruled in 26 A. L. J., 431 that in a suit by rival tenants where the defendant asserts an exclusive title in himself, *he must be deemed to claim*

1929

SAHDEO v. BUDHAI.

through or on behalf of the landlord. We find it extremely difficult to subscribe to this broad proposition. In our view, a case like the present has not been provided for in sections 99 and 121. There is nothing in the language of either of these two sections to suggest that a presumption arises that the defendant must be deemed to be claiming through the landlord. We are not aware of any rule of evidence outside sections 99 and 121 to warrant such a presumption. With great respect, we beg leave to differ from this view.

The point raised in this case is one of general importance and is likely to arise frequently in civil and revenue courts. It is desirable that the matter should be considered by a larger Bench for decision. Let the papers be laid before the Hon'ble the CHIEF JUSTICE for constituting a larger Bench for the disposal of the reference.

The case was accordingly laid before a Bench of three Judges.

The plaintiff was not represented.

Mr. *Shiva Prasad Sinha*, for the defendants.

SULAIMAN, J. :—This is a reference under section 267 of the Agra Tenancy Act, made by the Additional Munsif of Allahabad as he was in doubt as to his having jurisdiction to entertain this suit. His reference is in accord with a ruling of this Court, *Ram Partab* v. *Chhotey Lal* (1). The reference came up first before another Bench which felt doubtful as to the correctness of that ruling. The matter has accordingly been referred to a larger Bench.

The plaintiff first instituted a suit for declaration of his right to a tenancy in the revenue court, but his plaint was returned for presentation to the proper court on the ground that the revenue court had no jurisdiction to entertain the suit. He has now filed the suit in the civil court and an objection has this time been raised by the defendants that the civil court had no jurisdiction to hear the case. It is not necessary to set forth all the allegations in the plaint, but it would be sufficient to

(1) (1928) 26 A. L. J., 431.

1929

SAHDEO v. BUDHAI.

Sulaiman, J.

state that the plaintiff claimed that his father Daulat was a tenant jointly with the defendants Nos. 1, 2 and 3 and that on the death of his father the plaintiff has succeeded to the joint tenancy. He claimed (*a*) a declaration to the effect that the plaintiff jointly with defendants Nos. 1 to 3 is a tenant of the holding specified in the plaint and that defendant No. 4 has no right or share in it, and (*b*) if for any reason the plaintiff is deemed to have been dispossessed, he may be awarded possession over the same jointly with the defendants Nos. 1 to 3. The dispute is undoubtedly with regard to the tenancy and the claim of the plaintiff is contested by the defendants.

No doubt, under the old Tenancy Act it used to be held by this High Court that a dispute between rival claimants to a tenancy is cognizable by the civil court, particularly when the landholder is not a party to the proceeding. The Board of Revenue had expressed a contrary opinion.

The present case, however, is governed by the new Tenancy Act (Act No. III of 1926) and the old rulings are not necessarily applicable.

It is clear that the legislature has made drastic changes in the tenancy law and the language of the relevant sections has been considerably altered so as to widen their scope very much. Under section 99 of the Act a tenant who has been ejected or prevented from obtaining possession of any part of his holding otherwise than in accordance with the provisions of this Act by his landholder or any person claiming as landholder to have a right to eject him, or any person claiming through such landholder or person, whether as tenant or otherwise, may sue the person so ejecting him or keeping him out of possession for possession and compensation. Section 121 provides that at any time during the continuance of a tenancy the tenant of a holding may sue the

1929

SAHDEO v. BUDHAI.

Sulaiman, J.

landholder, or any person claiming to hold through the landholder, whether as tenant or rent-free grantee or otherwise, for a declaration of his right as tenant, and that in any such suit against a person claiming to hold through the landholder, the landholder should be joined as a party. These sections correspond to the old sections 79 and 95. Section 230, which has not been referred to in the order of reference or in the rulings cited in the judgment, corresponds to the old section 167 and provides in emphatic language that all suits and applications of the nature specified in the fourth schedule shall be heard and determined by the revenue courts, and no courts other than the revenue courts shall, except by way of appeal or revision as provided in this Act, take cognizance of any such suit or application, or of any suit or application based on a cause of action in respect of which adequate relief could be obtained by means of any such suit or application. This section is very wide and mandatory. So long as a suit or application of the nature specified in the fourth schedule can be heard by the revenue court the jurisdiction of the civil court is completely ousted. The question which we have to answer is whether the present suit is of a nature specified in that schedule. It seems to me quite clear that the relief for declaration claimed by the plaintiff would fall within the four corners of section 121 of the Act inasmuch as the defendants, although they had not claimed to be the landholder, admittedly claimed to be tenants and therefore must be deemed to be persons claiming through the landholder. The relief for possession falls within the scope of section 99 because here again the defendants are admittedly persons "claiming through such landholder or person, whether as tenant or otherwise." It does not seem necessary that the defendants must set up a case of a special grant or special contract with the landholder or a subsequent recognition by him of their

1929

SAHDEO v. BUDHAI.

Sulaiman, J.

title, coupled with a denial of the plaintiff's title. To place this restriction on the expression used in this section would be to limit the scope of the provisions by introducing new words into the section. In Group B of the fourth schedule, serial Nos. 12 and 15 include suits under sections 99 and 121 of the Act and therefore make section 230 directly applicable.

The Explanation to section 230 makes it still more clear that the revenue court alone would have jurisdiction to entertain this suit when adequate relief could be granted by the revenue court, it being immaterial whether the relief asked for is or is not identical with that which the revenue court could have granted. I may further point out that a declaration granted in favour of a tenant in the absence of the landholder may lead to further litigation and need not be absolutely final and conclusive. On the other hand, if the suit is instituted in the revenue court and the landholder is made a party under the provisions of section 121, sub-clause (2), the dispute may be settled once for all. In this view of the matter I would hold that this suit is not cognizable by the civil court and that the plaint ought to be returned for presentation to the revenue court. This is my answer to the reference.

MUKERJI, J.:—I entirely agree with my brother SULAIMAN'S remarks, but having regard to the importance of the question I would like to add just a few words of my own.

There can be no doubt that if section 230 of the Tenancy Act of 1926 excludes the suit before us from the cognizance of the civil court, the civil court will have no right to hear it on the simple ground that all cases of a civil nature should be heard by it. In order to see whether the case falls or not within the purview of section 230 of the Tenancy Act, we have to look to schedule

1929

SAHDEO v. BUDHAI.

4 and serial Nos. 12 and 15. These numbers refer to sections 99 and 121 of the Tenancy Act.

As already stated by my brother, SULAIMAN, J., the suit is partly one for a declaration of title that the plaintiff is a co-tenant of a certain holding with the defendants. The plaintiff further wants that in case it should be proved that he is out of possession, he should be put in joint possession with the defendants. So far as his suit is one for declaration of title, we have to see if it is covered by section 121 of the Tenancy Act. That section reads as follows :—

Mukerji, J.

"(1) At any time during the continuance of a tenancy the tenant of a holding may sue the landholder, or any person claiming to hold through the landholder, whether as tenant or rent-free grantee or otherwise, for a declaration of his right as tenant.

(2) In any such suit against the landholder any person claiming to hold through the landholder may be joined as a party, and in any such suit against a person claiming to hold through the landholder, the landholder *shall* be joined as a party."

It will be noticed that the suit may lie not only against the landholder but also against "any person claiming to hold through such landholder, whether as a tenant or . . ." The question then is whether the defendants, who are interested in denying the plaintiff's title, are or are not persons who are claiming through the landholder. In my opinion, when a person is admitted to be the tenant of a holding it must be taken that he is claiming through the landholder. He cannot claim otherwise than through the landholder. It is not necessary, therefore, that before the suit is instituted under section 121 the defendant should have declared anywhere, either orally or in writing, that he was claiming through the landholder. The words "through the landholder"

1929

SAHDEO v. BUDHAL.

were put down because the classes of suits contemplated might include a suit which was directed not only against a tenant but also against people other than tenants. Those people would come under the words "rent-free grantee or otherwise". The learned Judges who found difficulty in applying section 121 of the Tenancy Act were of opinion that the words, "claiming to hold through the landholder", implied a previous declaration of the character of the holding by the defendant. I respectfully differ from that opinion.

Mukerji, J.

So far as the suit relates to possession or joint possession, almost the same remarks apply if we read section 99 in the same light. The relevant portion of section 99 reads as follows:—"A tenant . . . prevented from obtaining possession of his holding . . . (*a*) by his landholder . . . or (*b*) any person claiming through such landholder . . . whether as a tenant or otherwise, may sue the person . . . . keeping him out of possession."

Now let us see whether the case before us falls or not entirely within the purview of this language. The persons who are interested in keeping the plaintiff out of possession are admittedly tenants. Being tenants, they are claiming not through any title held in themselves, but through a title held by the landholder. There seems therefore to be no escape from the language of section 99 of the Act.

As my brother has already pointed out, the amended section relied on settled a great anomaly that existed under the Act of 1901, as interpreted by this Court. A suit by a person who was admitted to be a tenant always lay in the civil court. The successful plaintiff, after going through litigation in three courts, still found himself confronted with a difficulty if the landholder was not inclined to accept him as a tenant. He had again to go through a campaign of litigation. To settle this anomaly, the language of sections 99 and

121 have been, very wisely, widely put, so that, once for all, the question of title might be settled to the satisfaction of the tenants and the landlord. That this idea was in the mind of the legislature is made perfectly clear by sub-section (2) of section 121. It enjoins on the plaintiff the duty of making the landholder a party where the suit is against any person other than the landholder. The idea is that the landholder must be there, so that the question may be settled once for all in his presence.

I agree in answering the reference in the manner proposed by my brother SULAIMAN, J.

BANERJI, J. :—I agree with the view taken by my learned brothers. I only wish to add that for the purpose of deciding whether a revenue court or a civil court has jurisdiction to try a suit, one has got to refer to section 230 of the Agra Tenancy Act. The intention of the legislature appears to be perfectly clear, as in section 230 it is provided that no court other than a revenue court shall take cognizance of any suit based on a cause of action in respect of which adequate relief could be obtained by means of any suit or application. A reference to schedule 4, Group B, serial Nos. 12 and 15 makes it clear that the revenue court could grant the relief which the plaintiff seeks by the present suit. The cause of action alleged by him is of such a nature that no question can arise as to the jurisdiction of a revenue court granting the relief the plaintiff asks for. I agree with my learned brothers that sections 99 and 121 of the Agra Tenancy Act are wide enough to provide for the relief claimed by the plaintiff.

BY THE COURT :—The present suit is not cognizable by the civil court. We accordingly order that the court of the Additional Munsif of Allahabad should return the plaint for presentation to the revenue court. As the defendants have been inconsistently raising the question of jurisdiction in the two courts, we direct that both parties should bear their own costs throughout.