

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
Mr. Justice Banerji.*

1932  
June, 7.

SRI KRISHAN LAL AND OTHERS (DEFENDANTS) *v.* BIJAI SINGH (PLAINTIFF).<sup>\*</sup>

*Jurisdiction—Civil and revenue courts—Agra Tenancy Act (Local Act III of 1926), sections 34, 82 and 230—Transfer by tenant—Includes execution sale—Grove sold in execution of a money decree against the grove-holder—Suit by landholder for possession of grove against auction purchaser—Suit lies in revenue court.*

The word "transfer" in sections 34 and 82 of the Agra Tenancy Act includes not only voluntary transfers but also transfers in execution of decrees. An execution sale of the holding of a tenant who can not himself validly sell it is accordingly invalid, and the landholder can sue in the revenue court under section 82 if he desires to eject the auction purchaser. By section 230 such a suit is not cognizable by the civil court. So, a suit by the landholder for possession of a grove, against an auction purchaser in execution of a simple money decree against the grove-holder, on the allegation that the purchase was invalid by reason of a custom prohibiting transfers of grove-land, lies in the revenue court. By section 197 of the Agra Tenancy Act a grove-holder is presumed to be a non-occupancy tenant, and as a sale of his holding was, in this case, alleged to be invalid by reason of a custom, an execution sale thereof would be equally invalid.

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

*Messrs. U. S. Bajpai, G. Agarwala, S. B. L. Gaur and K. N. Agarwala*, for the respondent.

SULAIMAN, C. J., and BANERJI, J.:—This is a defendants' appeal arising out of a suit brought by the landholder for a declaration that the property in dispute, which is a grove-land, was not liable to be sold in execution of a money decree against the landholder's grove-holder and for possession of the property. In substance the plaint is for the ejection of the purchaser of the grove on the allegation that a transfer

<sup>\*</sup>Second Appeal No. 1570 of 1929, from a decree of Gauri Prasad, Additional District Judge of Mainpuri, dated the 26th of August, 1929, reversing a decree of Raja Bahadur, Munsif of Mainpuri, dated the 17th of July, 1928.

was invalid and the landholder was entitled to recover possession of the grove. The defendants pleaded that the grove was transferable, as there was no custom prohibiting such a transfer. There was no plea taken that the civil court had no jurisdiction to entertain the suit. The plaintiff, however, put forward the case that there was a custom prohibiting transfers of groves.

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The suit was instituted on the 6th of September, 1927, after the coming into force of the new Tenancy Act, and the auction sale of the grove also took place shortly after the coming into force of the new Act. The first court dismissed the suit, but on appeal the lower appellate court has given the plaintiff a decree against the auction purchaser on the ground that there is a custom under which sales of groves are prohibited.

In second appeal the point is taken that the civil court had no jurisdiction to entertain the suit. As the point goes to the root of the matter and is one of jurisdiction, and as an appeal would lie to the Commissioner if a suit were filed in the revenue court, we are bound to entertain this objection if it is valid. The question of costs, however, is another matter.

In section 3(2) of the Agra Tenancy Act "land" means land which is let or held for agricultural purposes, or as grove-land or for pasturage. It is clear that a grove under the new Act is land within the meaning of the Act. It is also clear that under section 197(a) a grove-holder is a non-occupancy tenant.

It follows that under section 3, sub-clause (8) a grove is a holding. On the plaintiff's own showing there is a custom under which transfers are prohibited, with the result that no transfer can take place under section 197(b). It follows that the holding would be non-transferable under section 33 and also under section 34 of the Act. It then follows that according to the case put forward by the plaintiff there has been a transfer in contravention of the two sections and it

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is therefore void under section 34(1). But section 82 provides that if a tenant transfers his holding or any portion thereof contrary to sub-section (1) of section 34, both he and any person who may have obtained possession of the whole or any portion of the holding in pursuance of any such attempted illegal transfer shall be liable to ejection at the suit of the landholder, and to every such suit both the tenant and the transferee shall be made parties.

It is therefore obvious that if section 82 were applicable to the transfer of a grove in execution of a decree and were not confined to voluntary transfers by the tenant, the landholder can sue both the tenant and the transferee in the revenue court. It would then follow that adequate relief could be claimed in the revenue court. As a suit for such relief would be expressly provided for in section 82, no other court but the revenue court can take cognizance of such a suit. This is made clear by section 230. The explanation to that section shows that if the cause of action is one in respect of which adequate relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical with that which the revenue court could have granted.

The learned counsel for the respondents, however, contends that the provisions of section 82 cannot apply to a sale in execution of a decree. There is no doubt that if the words were to be taken too literally, there may be some force in this contention; but it seems to us contrary to the general policy of the legislature, as indicated in the various sections of the Act, to hold that there is a distinction between a voluntary and an involuntary transfer in section 82. After all, both are transfers of a tenant's holding and there is no reason why in the case of a voluntary transfer the landholder should be bound to sue in the revenue court, whereas in the case of an involuntary or compulsory transfer he

should go to a civil court. Under the new Act provision has been made for institution of suits by landholders against tenants and their representatives in the revenue courts only.

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We may also point out that a similar expression occurs in section 52 of the Transfer of Property Act where the words are : "the property cannot be transferred by any party to the suit". It has been held in numerous cases and there is now a consensus of opinion that the word "transfer" in that section is wide enough to cover both voluntary and involuntary transfers.

It may also be pointed out that for the purpose of declaring that a non-occupancy tenancy is not transferable, section 23(1) would have been sufficient. Nevertheless the legislature has gone on to provide in section 34 that every transfer made by a tenant in contravention of the provisions of this Act shall be void. We think the legislature could not have intended to leave out involuntary transfers from the scope of this provision. If a private transfer is void, so must be an involuntary transfer. The intention seems to be that where the transfer is void it cannot be validated by the consent of the landholder. We are therefore of opinion that section 82 applies to this case and, although the transfer was by means of a sale in execution of a decree against the tenant, the remedy of the landholder was to sue in the revenue court under section 82 of the Tenancy Act, impleading both the tenant and his transferee. We may point out that section 82 falls under schedule IV, group B, serial No. 10 of the Tenancy Act and an appeal in such a suit lies to the revenue court. In this view of the matter it is unnecessary to go into the question of custom. We therefore allow the appeal, set aside the decree of the lower appellate court and send the case back to the court of first instance with instructions to return the plaint for presentation to the proper court

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The plea of jurisdiction was not taken in the written statement; it appears to have been urged only at the time of the arguments. The defendants should not be allowed their costs in the first court. The trial court found the point in favour of the defendants and the lower appellate court has not considered it. The defendants will have their costs in the lower appellate court and in this Court.

### REVISIONAL CRIMINAL.

*Before Mr. Justice King and Mr. Justice Thom.*

1932  
June, 13.

EMPEROR v. BARMHA SINGH AND OTHERS.\*

*Criminal Procedure Code, sections 145 and 537—Magistrate's omission to record grounds of his being satisfied that a dispute likely to cause a breach of peace exists—Subsequent proceedings not vitiated unless it has occasioned a failure of justice—Irregularity—Jurisdiction.*

In proceedings under section 145 of the Criminal Procedure Code the mere omission by the Magistrate to record, under clause (1) of the section, the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists is an irregularity in procedure but does not deprive him of jurisdiction to take further proceedings under the section. The breach of a mandatory provision of the Code of Criminal Procedure does not necessarily amount to such an illegality as vitiates the whole trial or proceedings.

The provisions of section 537 of the Code are also mandatory; and a court of revision is absolutely prohibited from setting aside an order under section 145 on account of any omission or irregularity in the proceedings, unless such omission or irregularity has, in fact, prejudiced the accused or occasioned a failure of justice.

Messrs. *Govind Das* and *Durga Charan Singh*, for the applicants.

The Assistant Government Advocate (*Dr. M. Waliullah*), for the Crown.

\*Criminal Revision No. 21 of 1932, from an order of Ganga Prasad Varma, Sessions Judge of Fatehpur, dated the 23rd of September, 1931.