APPELLATE CIVIL.

Before Mr. Justice Boys and Mr. Justice Young.

1932
April, 8.

SARJU PRASAD (PLAINTIFF) *v.* MAHADEO PRASAD PANDEY AND ANOTHER (DEFENDANTS).*

Agra Tenancy Act (Local Act II of 1901), *section* 199 (3)—*Civil Procedure Code, section* 11—Res judicata—*Question of title decided by revenue court—Defendant in ejectment suit pleading that he is not a tenant but mortgagee—Decision of revenue court that defendant is not mortgagee—Principle of* res judicata *whether applicable.*

In a suit for ejectment brought in the revenue court under the Agra Tenancy Act, 1901, the defendant pleaded that he was not a tenant but a usufructuary mortgagee. The court decided the plea against him and decreed the suit for ejectment. Thereafter the defendant brought a suit for money on the allegation that he was a usufructuary mortgagee but had been deprived of possession and was therefore entitled to sue for the mortgage money. The question was whether the decision of the revenue court operated as *res judicata* and barred the suit.

Held, that the suit was not barred as *res judicata* by the terms of section 11 of the Civil Procedure Code; and there was no ground for applying to this case an "extension" of the principle contained in that section, which might be applicable in some special types of cases. Before a matter could be held to be *res judicata* it must be found, among other things, that the first court was competent to try the subsequent suit, and not merely a subsequent issue. While the revenue court was competent to try the issue as to whether the defendant before it was a mortgagee or not, it was not competent to try the subsequent suit.

There is nothing in section 199 of the Agra Tenancy Act, 1901, which justifies the suggestion that the revenue court deciding a question of title must be deemed to be a civil court. In clause (3) there is nothing more than a statement of the procedure to be followed. But even if it be conceded that the revenue court might for the immediate purpose be

*Second Appeal No. 228 of 1930, from a decree of Ram Ugrah Lal Srivastava, Subordinate Judge of Basti, dated the 22nd of November, 1929, confirming a decree of Mohan Shankar Saxena, Additional Munsif of Basti, dated the 15th of March, 1929.

deemed to be a civil court, there is no basis for the suggestion that it becomes a civil court competent to try any particular whole suit, or anything more than, at most, a civil court competent to try a particular issue of title.

Mr. *N. Upadhiya*, for the appellant.

Mr. *P. L. Banerji*, for the respondents.

BOYS and YOUNG, JJ. :—This is a plaintiff's appeal arising out of a suit for money on a mortgage. It would appear that Mahadeo Prasad executed a usufructuary mortgage on the 10th of June, 1899, in favour of Sarju Prasad, who lost possession and has brought the present suit. No question is really material in the matter except the single question of whether the suit is barred as *res judicata*. There were two previous decisions which were said to bar the present suit: but in this appeal we are concerned with only one of them, that of a revenue court. Mahadeo Prasad had brought a suit against Sarju Prasad in the revenue court to eject him from a plot. Sarju Prasad pleaded that he was a mortgagee, and his plea was rejected and Mahadeo's suit decreed. It was contended in the present suit that this question of whether Sarju Prasad was or was not a mortgagee having been decided against him by the revenue court, the matter was *res judicata*. Both courts have held that the suit was barred.

We are of opinion that the answer is to be found in the plain terms of section 11, and whether or no in some special types of cases a suit may be held to be barred, as it is put sometimes, by an extension of the principle to be found in section 11, we can see no possible ground for going beyond the section in the present case. A careful reading of section 11 makes it, in our view, perfectly plain that before a matter can be held to be *res judicata* it must be found, among other things, that the first court was competent to try the subsequent suit. Whether we take the words "competent to try such subsequent suit", or the words "competent to try the suit in which such issue has been subsequently

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raised", it must be found that the first court was competent to try, not merely a subsequent issue, but the subsequent "suit".

Now it is manifest that in the present case while the revenue court was competent to try the issue as to whether Sarju Prasad was a mortgagee or not, it was not competent to try the subsequent suit. One of us, sitting with another Judge, considered this point in *Hub Lal* v. *Gulzari Lal* (1). We have been referred by counsel for the respondents to the decision in *Baru Mal* v. *Sundar Lal* (2). We do not consider, however, that this question was there directly considered. In that case in a previous suit in the revenue court the defendant had sued to eject the plaintiff, and the question of proprietary title arose, based upon the sale deed which was the basis of the second suit. It was pointed out that the revenue court could in the first case have adopted one of two courses; that "it might have referred the parties to the civil court, or it might have constituted itself a civil court and tried the question itself". In fact the revenue court did not refer the parties to the civil court, but tried the question of title itself. The learned Judges remarked: "The decision in that suit must be deemed to be the decision of a civil court. . . . . The question of the plaintiff's title . . . . must be deemed to have been decided in that suit. . . . . As we have stated above, the court, in the previous suit, was, by reason of the action taken by it, equivalent to a civil court which could have tried the subsequent suit." .

We are unable to find in the terms of section 199 of Act II of 1901 anything to justify the suggestion that the revenue court deciding a question of title "must be deemed to be a civil court". Section 199(3) merely says that the revenue court, if it decides to determine the question of title itself, "shall follow the procedure laid down in the Code of Civil Procedure for the trial

(1) (1927) I.L.R., 49 All., 543. (2) (1923) 21 A.L.J., 330.

of suits, and, notwithstanding anything contained in section 193 of this Act, all the provisions of the said Code shall apply to the trial of such question of title". There is nothing in this more than a statement of the procedure to be followed.

But even if it be conceded that the revenue court might for the immediate purpose be deemed to be a civil court, there does not appear to be any basis for the suggestion that it becomes a civil court competent to try any particular whole suit, or anything more than, at most, a civil court competent to try a particular issue of title.

If we were fully satisfied that the learned Judges had had in view the point to which we have referred earlier in this judgment, we should perhaps have deemed it advisable to send this case for consideration by a larger Bench. But in fact there is throughout the judgment nothing to indicate that the learned Judges' attention was particularly directed to the words "competent to try such subsequent suit or the suit" etc. It is true that they use the phrase "could have tried the subsequent suit", but there is nothing to show that their attention was particularly directed to the difference between "competent to try the subsequent suit" and "competent to try the subsequent issue". We have been referred to certain other cases, but the two that we have mentioned are the only two which may be considered to be more or less directly in point. The trial court having decided the whole case, we set aside the decree of the lower appellate court and direct it to re-admit the appeal under its original number and to dispose of it according to law. The appellant will have the costs of this appeal.