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by their Lordships of the Privy Council in the case of *Sura Lakshmiah* v. *Kothandarama Pillai* (1). Their Lordships definitely ruled that in India the principle of English law that when a property is purchased in the name of a wife, or a deposit is made in the wife's name, it would be presumed that the purchase or deposit was intended for her advancement, does not hold good in India. This being so, we hold that Mrs. Hope was not entitled to take more than one half of the money deposited with the Bank at the time of Mr. Hope's death. She has already withdrawn more than one half of the amount and the remaining amount must be available to the executors for the carrying out of the wishes of the deceased gentleman.

The second question is as to costs. The order of Mr. Hunter shows that the title of the executors to the money was contested by the defendant. Even in the present litigation the defendant claimed the money. In the circumstances there is no reason why the costs of this litigation should come out of the estate of the deceased person.

In the result, we dismiss this appeal with costs.

Before Justice Sir Shah Muhammad Sulaiman and Mr. Justice Niamat-ullah.

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BAHADUR AND ANOTHER (DEFENDANTS) *v.* MAHARAJA OF BENARES (PLAINTIFF).*

Agra Tenancy Act (Local Act III of 1926), *sections* 84, 197, 268, 269—*Grove-holder—Houses built on grove-land—Suit for ejectment—Forum—Jurisdiction—Civil and revenue courts—Question of jurisdiction not raised in first court—Limitation—Section* 269 *cannot get round bar of limitation which would be applicable if suit had been brought in revenue court.*

A grove-holder built certain houses on a considerable portion of the grove-land. Some years later the landlord

*Second Appeal No. 409 of 1928, from a decree of K. A. H. Sams, District Judge of Benares, dated the 9th of February, 1928, reversing a decree of Niraj Nath Mukerji, Additional Munsif of Benares, dated the 31st of October, 1927.

(1) (1925) I.L.R., 48 Mad., 605.

brought a suit against him in the civil court for a declaration that he had no power to make constructions, for recovery of possession and for a perpetual injunction. The first court held that although many of the trees had withered, the land had not yet lost its character as a grove, and accordingly dismissed the suit. The lower appellate court held that the land having been built upon had lost its character as a grove, and decreed the suit. No question of jurisdiction was raised in the lower courts, but in second appeal the plea was raised that the suit was not cognizable by the civil court. *Held*,—

That in the view that the land had ceased to be a grove, the defendant had become liable to be ejected as a non-occupancy tenant whose term had expired in accordance with section 197 (*a*) of the Agra Tenancy Act, 1926; so a suit to eject him lay in the revenue court under section 86 of the Act and the present suit was not cognizable by the civil court; the relief as regards the declaration was substantially one as to the rights of a tenant against the landholder and was entertainable by the revenue court; similarly, under section 85 of the Tenancy Act a relief for an injunction could have been asked for in the revenue court.

As the appeal from a suit under section 86 would lie to the revenue court and not to the civil court, section 268 had no application to the present case, and the objection as to the want of jurisdiction must be entertained although it was not raised in the court of first instance.

In the view that the land had not ceased to be a grove but that the defendant had, by making the buildings, done an act inconsistent with the purpose for which the land was let, the plaintiff was entitled to sue in the revenue court for ejectment of the defendant under section 84 of the Tenancy Act. An appeal from such suit, the valuation being over Rs. 200, would lie to the civil court; so section 268 would be applicable, with the result that the plea of jurisdiction would not now be entertained, and under section 269 the appeal would be disposed of by the High Court as if the present suit had been instituted in the right court. But section 269 could not override the bar of one year's limitation which is placed on suits under section 84, and the suit would be barred by limitation, and no relief would be obtained by the plaintiff by the procedure under section 269.

Mr. *K. Verma*, for the appellants.

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Messrs. *P. L. Banerji*, *Badri Narain* and *Gadadhar Prasad*, for the respondent.

SULAIMAN and NIAMAT-ULLAH, JJ. :—This is a defendants' appeal arising out of a suit for a declaration that the defendants have no power to make constructions, and for recovery of possession and a perpetual injunction. In the plaint it was admitted that the land in dispute was entered in the revenue papers as a grove and it was further alleged that for some time the trees standing upon it dried up and the land became vacant and no fresh trees were planted, that the defendants without the permission of the plaintiff began to construct a *pucca* and *kachcha* house on a portion of the plot, which action was wrongful. The cause of action was alleged to have accrued in December, 1916, when the constructions were commenced. Many pleas were taken in the written statement. It was alleged that the land was an ancestral *muafi* grove of the defendants, that all the trees had not dried up and that the land had never changed its character as a grove, as trees were still standing on a large portion of the land. It was further pleaded that the constructions complained of were made twelve years ago and the claim was barred by the six years' rule of limitation. But no plea as to want of jurisdiction was raised.

The first court found that over a half of the land occupied formerly by the grove old trees still stood and that building had been made on the eastern portion of the land, over which there were only a few trees left. It came to the conclusion that the plot had not lost its character as a grove and accordingly dismissed the suit.

On appeal the learned District Judge has affirmed the findings of fact that on about half the area, to the west, of the plot there are 15 trees while on the eastern side there are only three trees and on this

portion there are no less than four buildings, two of which appear to be quite recent. He came to the conclusion that as matters stood now the defendants would be prevented from using nearly half the land to the east for purely building purposes, and that accordingly in view of the definition of "grove land" given in the new Tenancy Act, the land no longer retained the character of a grove. He set aside the decree of the first court and decreed the claim.

On appeal it is urged for the first time that the civil court had no jurisdiction to entertain the suit. It has been settled by the pronouncement of the Full Bench case of *Ram Iqbal Rai* v. *Telesari Kuari* (1), that section 268 of the new Tenancy Act would have no application to a case where the civil court had disposed of a matter in which, if brought in the revenue court, no appeal would have lain to the civil court. The objection as to the want of jurisdiction, if well founded, must therefore be entertained, although, in view of the fact that it was not raised earlier, the defendants may be deprived of their costs.

According to the allegations contained in the plaint the defendants had the status of grove-holders who have converted the land into a building site by making constructions thereupon and have broken a condition. Chapter XII of the new Tenancy Act deals with the rights and liabilities of grove-holders. A grove-holder is a non-occupancy tenant, presumed to be holding under a lease, the term of which expires when the land ceases to be a grove land. He is liable to be ejected under section 84 or on the ground that he held under a lease the term of which has expired. It is noteworthy that the provisions relating to the rent-free grantees contained in chapter XI are not applicable to grove lands.

Assuming the finding of the District Judge to be correct that the land has lost its character as a grove

(1) (1930) I.L.R., 53 All., 75.

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inasmuch as it has been built upon, the plaintiff would have been entitled to institute a suit under section 84 of the Tenancy Act for the ejectment of the defendants on the ground that the condition that the character of the grove would be retained had been broken and the land was being used in a way inconsistent with the previous grant.

No doubt the valuation of the suit being much more than Rs. 200, the appeal from the decree passed in such a suit, even if filed in the revenue court, would have lain to the civil court, and under section 269 of the Tenancy Act, all the materials being on the record, the High Court can dispose of the appeal as if the suit had been instituted in the right court. But this section would not override the bar of limitation which is placed on suits for ejectment under section 84 of the Tenancy Act. The suit is to be instituted within one year from the date when the forfeiture is incurred or the condition is broken. In the present case there is no allegation in the plaint that any construction was made within one year of the suit. As already pointed out, the cause of action was alleged to have accrued in 1916. The learned Munsif who inspected the locality thought that some buildings were very old and that some were of about three or four years' standing. The claim under section 84 would therefore be barred by the law of limitation. It is therefore not possible for us to give relief to the plaintiff on the ground that, although the suit should have been instituted in the revenue court, all the materials being on the record the matter should now be disposed of in appeal by us.

It is next urged on behalf of the plaintiff that as the grove has lost its character as a grove the defendants have become mere non-occupancy tenants holding from year to year and are liable to ejectment and the right to eject them is a recurring right without any question of limitation.

But even if this position be assumed to be correct, the plaintiff's remedy would be to eject the defendants not under section 84 but under section 86 of the Tenancy Act, which is the same as the ground mentioned in section 197 (*e*) of the Act, treating the defendants as tenants from year to year, originally holding grove land the term of which has expired. Such a suit, however, is cognizable exclusively by the revenue court and an appeal lies in that case to the revenue court and not to the civil court. In this view of the matter it is not possible for us to entertain this claim, treating it as one for the ejectment of a non-occupancy tenant from year to year.

The relief as regards the declaration is substantially one as to the rights of a tenant against the landholder and was entertainable by the revenue court; similarly, under section 85 of the Tenancy Act even a relief for an injunction could have been asked for in the revenue court. We may also point out that the relief as regards the injunction is very vaguely worded and merely asks for restraining the defendants from doing any act prejudicial to the rights of the plaintiff and does not in so many words ask for restraining them from going on with any construction. There is no suggestion that there is any reasonable apprehension of further constructions being made on the plot.

Having regard to all these circumstances it must be held that the civil court had no jurisdiction to entertain this plaint. The plaintiff's remedy, if any, may be to eject the defendants through the revenue court, treating them as persons in occupation of the land which has lost its character of a grove or where a condition has been broken.

We accordingly allow this appeal and setting aside the decrees of the courts below direct that the plaint be returned to the plaintiff for presentation to the proper court if so advised.