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NARAIN.

We consider therefore that in the present case it is not proved that the judgment-debtor did become a *sanyasi*, whether before or after attachment, or at all. These, we may mention, are some of the difficulties which would arise if this doctrine of civil death were held to come under section 50, but on the general point of law we consider that section 50 is not intended to apply to the case of civil death and accordingly we dismiss these appeals with costs.

We note that in this case the decree-holder does not admit the fact that the judgment-debtor has become a *sanyasi* and, as observed, it is not proved that he did become a *sanyasi*.

### REVISIONAL CIVIL.

*Before Justice Sir Shah Muhammad Sulaiman.*

1931  
January,  
15.

KHUSHNUD HUSAIN (DEPENDANT) v. JANKI PRASAD  
AND ANOTHER (PLAINTIFFS)\*

*Civil Procedure Code, section 115—Revision—Lower court acting entirely without jurisdiction—Other remedy available—Whether High Court should interfere—Specific Relief Act (I of 1877), section 9—Summary suit for restoration of possession of agricultural holding—Jurisdiction—Civil and revenue courts.*

The fact that another remedy may be open to the party seeking revision may be a ground for the refusal to exercise the discretion in a fit case, but that would not oust the jurisdiction of the High Court to interfere in cases where the court below has acted entirely without jurisdiction and the decree of the court below is *ultra vires*; the High Court would ordinarily interfere in setting it aside.

A suit brought in the civil court, under section 9 of the Specific Relief Act, in respect of an occupancy holding is not independent of the provisions of the Agra Tenancy Act relating to jurisdiction of courts. If according to the allegations in the plaint the suit is one cognizable by the

\*Civil Revision No. 387 of 1930.

revenue court, then the fact that it is brought under section 9 of the Specific Relief Act will not give the civil court jurisdiction to entertain it.

Mr. *Mushtaq Ahmad*, for the applicant.

Mr. *K. Verma*, for the opposite parties.

SULAIMAN, J. :—This is an application in revision from a decree of the court below under section 9 of the Specific Relief Act. The revision is filed on the ground that the suit was not cognizable by the civil court but was one exclusively triable by the revenue court. A preliminary objection is taken on behalf of the respondents that no revision lies inasmuch as there is another remedy open to the plaintiffs. Reliance is placed on the case of *Jwala v. Ganga Prasad* (1) and *Ram Kishan Das v. Jai Kishan Das* (2). In the former case the revision had been filed on the ground that the order of the Magistrate under section 145 of the Code of Criminal Procedure was a bar to a suit under section 9 of the Specific Relief Act, and in the second case the ground was that the court below had made a mistake of law in holding that the plaintiff was not entitled to sue. In neither of these cases the ground of revision was that the court below had absolutely no jurisdiction to hear the suit. It seems to me that the fact that another remedy may be open to the plaintiffs may be a ground for the refusal to exercise the discretion in a fit case, but that would not oust the jurisdiction of the High Court to interfere in cases where the court below has acted entirely without jurisdiction. The position would be different where the decree of the court below is *ultra vires*. The High Court would ordinarily interfere in setting aside such an order. I therefore overrule the preliminary objection.

Coming to the merits of the revision it is no doubt proved that the property in dispute is an occupancy

(1) (1908) I.L.R., 30 All., 331.

(2) (1911) I.L.R., 33 All., 647.

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holding which is an agricultural land. The court below has thought that the provisions of the Tenancy Act are not applicable to a case where the plaintiff comes to the civil court under section 9 of the Specific Relief Act for recovery of possession. Its view is based on the fact that it is only a civil court which can entertain a suit under that section. This argument does not appeal to me. If a suit were barred by the provisions of the Tenancy Act, it would be immaterial whether a civil suit is brought under section 9 of the Specific Relief Act or under section 9 of the Code of Civil Procedure.

The law on this question has been laid down in the recent Full Bench case of *Ananti v. Chhannu* (1). In view of the law laid down therein, I must examine the plaint. The plaintiffs alleged that their grandfather Sohan Lal was the occupancy tenant and on his death he left three sons, two of whom are since dead. The plaintiffs as the grandsons of Sohan Lal claimed the tenancy and alleged that Shama Kunwar, the widow of one of the sons of Sohan Lal, had no right in it, although her name was fictitiously recorded in the revenue papers. The plaintiffs alleged that they were actually cultivating the land and were in possession of it, that a lease was obtained from Shama Kunwar but the lessee failed to obtain possession under it; then subsequently another lease dated the 21st of June, 1929, was obtained by the defendant from Shama Kunwar and under the pretence of having secured rights under this lease the defendant forcibly dispossessed the plaintiffs from their fields. The plaintiffs expressly alleged that Shama Kunwar had no right whatsoever to this land and that the defendant is a trespasser. It was not expressly alleged in the plaint that the tenancy was a joint family tenancy or that the grandsons of Sohan Lal had succeeded to it to the exclusion

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of the widow, Shama Kunwar. But there can be no doubt that the plaintiffs did not admit that the defendant was in any way a sub-tenant holding the land from the plaintiffs. In this view of the matter there was no admission in the plaint which would show that the suit as brought was not cognizable by the civil court.

Once the plaint was entertained, the plaintiffs had to be pinned down to the allegations in their plaint and if those allegations were not proved the suit would have to be dismissed. The court below, however, has gone into the question of fact and has found that the plaintiffs had been in possession within six months of the suit and were forcibly dispossessed by the defendant. On that finding it has accordingly given the plaintiffs a decree under section 9 of the Specific Relief Act. This finding cannot be challenged in revision. The finding of the court below is of course not final on the question of real title, which would have to be fought out in a subsequent litigation.

The application is accordingly dismissed with costs.

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### FULL BENCH.

*Before Mr. Justice Mukerji, Mr. Justice Banerji  
and Mr. Justice Bennet.*

ABHILAKHI (APPLICANT) v. SADA NAND AND OTHERS  
(OPPOSITE PARTIES)\*

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 1931  
 January,  
 16.
 

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*Civil Procedure Code, section 114; order XLVII, rule 1(b)  
—Review of judgment in Letters Patent appeal—Conflict  
between section and rule—Civil Procedure Code, section  
128(1).*

*Held by the majority (MUKERJI, J., dissenting) that no  
application lies for review of a judgment passed in an appeal  
under clause 10 of the Letters Patent.*

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\*Application for review of judgment in Appeal No. 33 of 1929, under clause 10 of the Letters Patent.