

## REVISIONAL CIVIL

Before Justice Sir Barjor Jamshedji Dalal.

1930  
November,  
19.

RAJWANTI KUER (DEPENDANT) *v.* MAHABIR RAI  
(PLAINTIFF).\*

*Specific Relief Act (I of 1877), section 9—Summary suit for restoration of possession—Jurisdiction—Revision—Civil Procedure Code, section 115—Other remedy not available.*

*P* took a possessory mortgage of certain occupancy holdings of *D*. Subsequently *D* sued *P* in a revenue court for his ejection as a sub-tenant, and *P* was ejected in accordance with the decree of the revenue court. *P* thereupon brought a suit under section 9 of the Specific Relief Act for restoration of possession, and it was decreed. *D* applied in revision to the High Court. *Held* that the revision lay, because the civil court had acted without jurisdiction, as the plaintiff had not been dispossessed otherwise than in due course of law but in accordance with the decree of a competent revenue court; nor was any other remedy by way of a fresh suit available to the defendant.

Mr. *Ambika Prasad*, for the applicant.

Mr. *A. P. Pandey*, for the opposite party.

DALAL, J. :—An objection was raised by Mr. *Pandey* on behalf of the opposite party that no revision lay. This was a suit brought by the plaintiff Mahabir Rai under section 9 of the Specific Relief Act for recovery of possession on the ground that he was dispossessed without his consent from immovable property within the period of limitation permitted under that section. The plaintiff's suit was decreed. No appeal can lie from a decree in such a suit and, therefore, the defendant applied by way of revision. Two rulings were cited by learned counsel, *Jwala v. Ganga Prasad* (1) and *Ram Kishan Das v. Jai Kishan Das* (2). In neither case the question of jurisdiction was raised. Both cases were decided on the ground that it was open to the defendant to sue to

\* Civil Revision No. 348 of 1930.

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

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

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establish his title to such property and to recover possession thereof. In the present case there is no such remedy open to the defendant. The plaintiff alleged that he was the mortgagee of occupancy land. The mortgages were subsequent to 1901 and so prohibited by law. The defendant alleged that the plaintiff was a sub-tenant. On the basis of this allegation she sued in the revenue court for the ejection of the plaintiff, and it was in pursuance of a decree obtained in that suit that the plaintiff was ejected. The title of the defendant to be a tenant as against the plaintiff sub-tenant has already been established by a proper suit in the revenue court, and there is no further remedy open to her in pursuance of the present decree of the trial court of civil jurisdiction. In my opinion this application does lie.

The second question is whether the civil court has jurisdiction. The civil court has jurisdiction to try a suit where any person is dispossessed without his consent from immovable property otherwise than in due course of law. The contention of the defendant is that the plaintiff was not dispossessed otherwise than in due course of law, but that he was dispossessed in due course of law by a revenue court which held, as that court had jurisdiction to do so as regards agricultural land, that the plaintiff was the defendant's sub-tenant. The learned Judge of the trial court has quoted certain rulings: *Rudrappa v. Narsingrao* (1) and *Roshan-ulla v. Hazir* (2). What he has said on the authority of those two rulings is:—"The phrase means the regular normal process and effect of the law operating on a matter which has been laid before it for adjudication. Thus it appears that even if a man is dispossessed through a law court, still that dispossession would not be in due course of law if the process employed was one that ought not to have been followed". Following up these observations, the ejection of the plaintiff must be held to have been in due course of law. The process

(1) (1904) I.L.R., 29 Bom., 218.

(2) (1913) 18 Indian Cases, 727.

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employed by the defendant was a correct one of suing in the revenue court for the ejectment of a sub-tenant. It was a regular normal process of a revenue court to order the ejectment of a sub-tenant from agricultural land. The revenue court had jurisdiction to adjudicate upon the matter. It was pointed out that when both the defendant and the plaintiff equally broke the law forbidding mortgage of an occupancy holding, the defendant could not obtain possession without paying the mortgage charges of the plaintiff. That, however, is a point for the consideration of the revenue court. The authority of the revenue court thereby is not shaken in ejecting a sub-tenant. It is not as if the mortgages were valid ones and the revenue court would have no authority to brush aside valid mortgage transactions.

In the result, I am of opinion that no suit under section 9 of the Specific Relief Act lay to the Munsif's court, and he had exercised jurisdiction not vested in him.

This application is decreed with costs and the plaintiff's suit is dismissed with costs in all courts.

#### APPELLATE CIVIL

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

HIKMAT-ULLAH KHAN (OBJECTOR) v. SAKINA  
 BEGAM AND OTHERS (APPLICANTS).\*

1930  
 November,  
 20.

*Criminal Procedure Code, section 476B—Appeal—Second appeal—Indian Penal Code, section 210—Order of attachment fraudulently obtained.*

Section 476B of the Criminal Procedure Code contemplates that only one appeal should lie and that, when an appellate court has made a complaint under this section or has refused to make a complaint, no further appeal should lie to the High Court.

*Held*, also, that where an order of attachment is fraudulently obtained by a decree-holder for a sum not due, it having already been paid to him, section 210 of the Indian Penal Code applies.

\* First Appeal No. 104 of 1930, from an order of H. G. Smith, District Judge of Meerut, dated the 3rd of February, 1930.