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court of small causes in respect of this suit by virtue of section 24(4), which does not in terms apply, the transfer not being from a court of small causes. The Additional Munsif of Shahjahanpur could, therefore, try the suit only within the limits of his own jurisdiction, and not within the jurisdiction supposed to have been delegated to him. In my opinion, the decree passed by the Additional Munsif in this suit was as much open to appeal as any other decree passed by him in any suit of a like description instituted in his court. Accordingly I hold that the plaintiff's appeal to the court of the District Judge was competent and that he should have disposed of it on the merits. The application for revision is allowed with costs, the decree of the District Judge is set aside and the case is remanded to his court with the direction that the plaintiff's appeal be disposed of on the merits.

## APPELLATE CIVIL

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

1935 *February*, 22

RAM CHARAN AND ANOTHER (DEFENDANTS) *v.* GAJADHAR AND ANOTHER (PLAINTIFFS)*

*Landlord and tenant—Trees*—Abadi—Parti *land—Trees planted by tenant in waste land of* abadi—*Ownership.*

Trees planted by tenants, without the permission of the zamindar, in *parti* land of the abadi presumably belong to the zamindar who is the owner of the land, unless a custom is set up and proved which entitles the tenants to cut and take the wood of such trees.

Messrs. *Akhtar Husain Khan* and *Kedar Nath Sinha*, for the appellants.

Messrs. *G. P. Bhargava* and *Deo Narain Singh*, for the respondents.

*Second Appeal No. 1171 of 1931, from a decree of Kalidas Benerji, Additional Subordinate Judge of Allahabad, dated the 22nd of May, 1931, confirming a decree of Thakur Hardeo Singh, Munsif, East Allahabad, dated the 25th of April, 1930.

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SULAIMAN, C.J., and BENNET, J.:—This is a second appeal by the defendants against concurring decrees of the two lower courts awarding the plaintiffs Rs.75 damages for the cutting down of a neem tree in *parti* land in the village site by the defendants. The plaint set out that the tree was owned and possessed by all the zamindars of the village and that the defendants cut it down without any right. The written statement alleged that the tree was planted by the father of defendant No. 1 close to his house which was now used as a cattle-shed and was still in the possession of the defendants, and that the tree was planted more than 40 years ago, and that the defendants required wood for the construction of their house and therefore got the tree cut down. The written statement did not clearly say that the tree was planted with the permission of the zamindars. Further, it did not say that there was any custom in the village by which the defendants tenants were entitled to the wood of trees planted by them on *parti* land in the village abadi. The sole issue framed was whether the plaintiff is the owner of the tree in suit and to what sum the plaintiff is entitled. The lower court found that the plaintiff did not know who planted the trees, that the trees were planted by the ancestor of the defendant in *parti* land of the abadi, that there was no evidence of the custom, that the defendants were mere trespassers, and therefore the suit was decreed. The lower appellate court found that there was no permission of the zamindar pleaded or proved and it upheld the decree, regarding the defendants as trespassers.

The defendants have appealed to this Court on the ground that they have a legal right to take the wood of this tree. The defendants rely on the ruling of DANIELS, J., in *Ram Nath* v. *Mata Sahai* (1), in which he dealt with other matters and at page 418 he stated: "It is next argued that in the absence of proof of

(1) A.I.R., 1923 All., 417.

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special custom Jagannath, though in possession of the trees, had no right to transfer them. The lower court relies on the ruling in *Jalesar Sahu* v. *Raj Mangal* (1), and I agree with the lower court that whatever views may formerly have been held, the presumption now is that a tenant has a right to cut and sell trees planted by him." The judgment shows that the suit related to the possession of certain trees and of a house in the abadi. The reasons given by the learned Judge are vague and the ruling to which he refers relates to the case of trees planted on what had been an occupancy holding. That ruling, *Jalesar Sahu* v. *Raj Mangal* (1), does not apply, in our opinion, to the case of trees planted on *parti* land in the abadi. On behalf of the plaintiffs reliance is placed on the case of *Jugdip Narain Singh* v. *Jokhan Ahir* (2) in which STANLEY, C.J., and PIGGOTT, J., held that trees planted in a grove outside the occupancy holding of a tenant could not be sold by the tenant, and on the case of *Ram Sarup* v. *Jagan Nath* (3), in which SUNDER LAL, J., held that a tenant had no right to sell trees planted on the waste land in a village. We consider that these two latter rulings should be followed. For the plaintiffs reliance was also placed on the case of *Gobardhan Pande* v. *Debi Bux* (4). This was a ruling by BOYS, J., and in regard to trees planted on *parti* land in the abadi he held that the criterion was that where a person who has planted the trees gives or gives up something in return for the permission to plant the trees there, in the absence of other special considerations, the trees become the property of the person who plants them, but where he gives nothing, the property in the trees becomes that of the zamindar. We do not think that this is a general criterion which we should follow, as it is not apparent from where the doctrine of consideration is derived, but the case does not apply to the present suit,

(1) (1921) I.L.R., 43 All., 606.
(2) (1910) 5 Indian Cases, 256.
(3) (1914) 25 Indian Cases, 152.
(4) A.I.R., 1929 All., 146.

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because in the present suit there was no previous permission to plant.

It is usual that in cases like the present there is evidence of custom and a finding of custom, and we consider that it lay on the defendants to plead and prove a custom by which they could be entitled to take the wood of this tree. In the absence of any proof of custom, we consider that *prima facie* the presumption is in favour of the zamindar. The zamindar is the owner of the soil of a *parti* and presumably the tree which is grown on that *parti* land and attached to the soil is transferable with a transfer of land and presumably therefore the tree goes with the land and must be regarded as pertaining to the land. In the absence therefore of a pleading and proof that the defendants had a right to cut the tree, we hold that the defendants had no such right. We accordingly consider that the decision of the lower courts is correct and we dismiss this second appeal with costs.

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

GOVIND PRASAD (PLAINTIFF) *v.* KANDHAI SINGH AND OTHERS (DEFENDANTS)*

1935 *February* 22

*Agra Tenancy Act (Local Act III of 1926), sections 99, 121—Dispossession of sub-tenant by landlord (owner)—Suit by sub-tenant against the landlord—Jurisdiction—Civil and revenue courts.*

A sub-tenant of certain occupancy tenants, who after granting the sub-lease abandoned their holding, was dispossessed by the landlords. *Held*, that a suit by the sub-tenant against the landlords or landholders-in-chief was covered by sections 99 and 121 of the Agra Tenancy Act and was cognizable by the revenue court.

Mr. *S. N. Seth*, for the appellant.

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

*Second Appeal No. 1184 of 1931, from a decree of Ganga Prasad Verma, Subordinate Judge of Fatehpur, dated the 8th of June, 1931, modifying a decree of N. P. Sanyal, Munsif of Fatehpur, dated the 4th of July, 1930.