Before Mr. Justice Thom and Mr. Justice Iqbal Ahmad

SUKHDEO AND ANOTHER (DEFENDANTS) *v.* BASDEO AND OTHERS (PLAINTIFFS)* 1935 *February*, 20

Agra Tenancy Act (Local Act III of 1926), sections 121, 230—Suit for partition of joint family property, such property including tenancy holdings—Prayer for declaration of plaintiff's half share in the holdings, and for partition of other properties—Jurisdiction—Civil and revenue courts—Hindu law—Partition—Rendition of accounts—Whether manager liable to render past accounts.

A suit for partition of joint family property is cognizable, in its entirety, by the civil court, notwithstanding the fact that part of the joint property consists of tenancy holdings and one of the reliefs prayed for by the plaintiff is a declaration that he has a half share in those holdings.

Section 121 read with section 230 of the Agra Tenancy Act no doubt bars the jurisdiction of the civil court as regards a suit by a tenant for declaration of his right to a holding, but the suit contemplated by section 121 is a suit for declaration of right to a holding pure and simple, and not a suit in which the cause of action on which the suit is based entitles the plaintiff not only to a declaration of right to a holding but also to other reliefs which can not be granted by the revenue court. Such suits are cognizable by the civil court, for no adequate relief can be granted by the revenue court on the plaintiff's cause of action, and the civil court is competent, while granting to the plaintiff the other reliefs, to grant him also a decree for the declaration of his right to the holding. It is not necessary in such cases to split up the cause of action into two suits, one to be filed in the civil court and the other in the revenue court; there was no such provision, express or implied, in the Agra Tenancy Act, and the legislature could not have contemplated such a course which would be highly inconvenient and might lead to anomalous or contradictory results.

In the absence of proof of misappropriation or fraudulent or improper conversion by the manager of a joint Hindu family a coparcener seeking partition is not entitled to call upon the manager to render accounts for his past dealings with the family property. He is entitled only to an account of the joint family property as it exists on the date when he demands partition.

*First Appeal No. 86 of 1931, from a decree of Chatur Behari Lal, First Additional Subordinate Judge of Jaunpur, dated the 23rd of January, 1931

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

Messrs. *S. B. L. Gaur* and *Kanhaiya Lal Misra,* for the respondents.

THOM and IQBAL AHMAD, JJ.:—This is a defendants' appeal and arises out of a suit for (1) partition of the plaintiffs' moiety share in the property given at the foot of the plaint, (2) a declaration of the plaintiffs' title to a moiety share respecting the property not capable of partition by the civil court, and (3) rendition of accounts of the profits of the joint family property and business and a decree for a moiety share in the same.

The properties in dispute in the suit were immovable properties including zamindari, tenancy holdings and house property. We are not concerned in the present appeal with the movable and other properties in dispute in the suit.

One Shankar Tewari died leaving two sons Sukhdeo and Basdeo. Basdeo and his sons were the plaintiffs in the suit and Sukhdeo and his descendants were the principal defendants. The plaintiffs' case was that Basdeo and Sukhdeo and their descendants continued to live as members of a joint Hindu family till the date of the suit and that Sukhdeo was the manager of the family. The plaintiffs alleged that all the properties detailed at the foot of the plaint were joint family properties and the share of the plaintiffs in the same was to the extent of one half. They charged Sukhdeo with misappropriation of the profits and assets of the joint family and maintained that he was liable to account with respect to the family assets.

The defendants resisted the suit mainly on the allegation that separation between the plaintiffs and the defendants took place about 10 years before the date of the suit and that after separation Basdeo and Sukhdeo acquired properties separately and the allegation of the plaintiffs that all the properties mentioned in the plaint were joint family properties was untrue.

They denied the allegation of the plaintiff that Sukhdeo was the manager of the alleged joint family and maintained that after the death of Shankar Tewari, Basdeo plaintiff continued to be the manager of the family till the partition took place between the branches of Basdeo and Sukhdeo. They repudiated the charge of misappropriation levelled by the plaintiffs against Sukhdeo and contended that even if the family be found to be joint and Sukhdeo be held to be the manager, he is not legally liable to be called upon to render accounts. The defendants further contended that the plaintiffs' claim for partition of the fixed-rate holdings, occupancy holdings, etc., was not cognizable by the civil court, and most of the argument addressed in this appeal has centred round this plea.

The trial court held that the family of the parties was joint till the date of the suit and all the properties out of the properties detailed in the plaint which were proved to be in existence were joint family properties. It further held that as the family was joint the plaintiffs were not entitled to a decree for rendition of accounts against Sukhdeo.

At the trial the plaintiffs abandoned their claim for partition of the fixed-rate and occupancy holdings and prayed only for declaration that those holdings were the property of the joint family and the plaintiffs' share in the same was to the extent of one half, and the court below held that it had jurisdiction to grant that relief to the plaintiffs. In view of the findings noted above, the court below, while dismissing the plaintiffs' suit for rendition of accounts, passed a decree in the plaintiffs' favour declaring that the plaintiffs' share in the immovable properties including the holdings was to the extent of one half and directed partition of the movables, debts, etc.

In appeal before us no exception has been taken to the findings on the questions of fact recorded by the

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court below and the sole point raised on behalf of the defendants appellants is that the court below had no jurisdiction to grant a decree for the declaration of the plaintiffs' right in the fixed-rate and occupancy holdings. In support of this contention reliance has been placed on sections 121 and 230 of the Agra Tenancy Act, 1926, and on the decisions of this Court in *Sahdeo* v. *Budhai* (1), *Bunni Pandey* v. *Brahmdeo Pandey* (2), and *Bhagwan Sahai* v. *Ram Chander* (3).

It is provided by section 121 that at any time during the continuance of a tenancy the tenant of a holding may sue the landholder, or any person claiming to hold through the landholder, whether as tenant or rent-free grantee or otherwise, for a declaration of his right as tenant, and by section 230 all courts other than revenue courts are precluded, except by way of appeal or revision, from taking cognizance of all suits and applications of the nature specified in the fourth schedule of the Act, "or of any suit or application based on a cause of action in respect of which adequate relief could be obtained by means of any such suit or application". The provisions of section 230 are mandatory and the jurisdiction of the civil court from taking cognizance of suits or applications specified in the fourth schedule of the Act or based on a cause of action in respect of which adequate relief could be obtained by means of any such suit or application is absolutely barred. A suit for a declaration of plaintiff's right as tenant under section 121 of the Act is specified at serial No. 14 of group B of the fourth schedule of the Act. It is clear, therefore, that since the passing of the Agra Tenancy Act (Act III of 1926) such a suit cannot be entertained by the civil court. Prior to the passing of the present Tenancy Act suits between rival claimants to a tenancy were, according to the rulings of this Court, cognizable by the civil court; but the legislature has, by the clearest

(1) (1929) I.L.R., 51 All., 853. (2) [1931] A.L.J., 852.
(3) [1932] A.L.J., 849.

possible provisions in the present Act ousted the jurisdiction of the civil court with respect to such suits, and the revenue court and the revenue court alone is competent to entertain and try such suits. This is the view that has been taken in the three decisions of this Court noted above and it has been held in the Full Bench decision in *Sahdeo* v. *Budhai* (1) that a person who claims to be a tenant must be deemed to be "claiming to hold through the landholder" within the meaning of section 121 of the Act, irrespective of the fact that he does not set up a case of a special grant or a special contract with the landholder as the basis of his claim. It must, therefore, be taken as settled law so far as this Court is concerned that a suit by a plaintiff for a declaration that he is either the sole tenant or joint tenant with the defendant of a holding is within the exclusive jurisdiction of the revenue courts.

The question however remains whether the civil court has jurisdiction to entertain a suit which is based on a cause of action that entitles the plaintiff not only to a mere declaration of his right to certain tenancy holdings but also to other reliefs which cannot be granted by the revenue courts, and if the civil court has jurisdiction to take cognizance of such a suit, is that court competent, while granting to the plaintiff the other reliefs, to grant him a decree for the declaration of his right to the holdings?

It cannot be disputed that civil courts have exclusive jurisdiction to try all suits of a civil nature unless their cognizance is either expressly or impliedly barred; vide section 9 of the Civil Procedure Code. It is also clear that a suit is of a civil nature if the principal question in the suit relates to a civil right. The reason for the rule that civil courts are ordinarily to decide disputes concerning civil rights is not far to seek. The determination of disputed questions of right involves ad-

(1) (1929) I.L.R., 51 All., 853.

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judication of complicated questions of fact and law and it is inexpedient to leave the decision of such questions in the hands of courts presided over by officers who have had no legal training or practise.

Section 121 read with section 230 of the Agra Tenancy Act no doubt bars the jurisdiction of the civil court as regards "suit by tenant for declaration of his right to a holding", but the suit contemplated by section 121 is a suit for declaration of right to a holding pure and simple, and not a suit in which the cause of action on which the suit is based entitles the plaintiff, apart from a declaration of his right to tenancy holdings, to other reliefs as well. There is no provision in the Tenancy Act which expressly ousts the jurisdiction of the civil court with respect to such suits. The only question that remains for consideration, therefore, is whether the jurisdiction of civil courts with respect to such suits is impliedly barred by that Act. In our judgment the answer to the question must be in the negative.

The scheme and the provisions of the Agra Tenancy Act clearly indicate that the legislature intended to vest revenue courts alone with jurisdiction to decide all disputes concerning tenancy holdings, but there is nothing in the Act to imply that if some of the reliefs prayed for in a suit can only be granted by the civil court, the jurisdiction of the civil court is ousted by the mere fact that the relief for a declaration of right to a certain holding is coupled with the other reliefs. Nor is there anything in the Act to show that if the cause of action entitles the plaintiff, over and above a declaration of his right to a holding, to certain other reliefs, for instance, declaration of his right to zamindari property, the plaintiff must split his cause of action in two parts and sue for a declaration of his right to the holding in the revenue court, and claim redress with respect to the zamindari property from the civil court.

To hold otherwise would be to ignore the words, "based on a cause of action in respect of which adequate relief could be obtained by means of any such suit or application", used in section 230 of the Act. That the legislature could not have contemplated the splitting of a cause of action, and the institution of two separate suits, one in the civil and one in the revenue court, by a plaintiff when the reliefs prayed for in the two suits are based on the identical set of facts, is demonstrated by the fact that such a course would be highly inconvenient and might lead to anomalous results. The institution of two such suits would involve both the plaintiff and the defendant in the unnecessary expenditure of adducing the same evidence in two different courts and would manifestly lead to waste of public time. Apart from this there would be the risk of contradictory decisions on the same set of facts being arrived at by the civil and the revenue courts. In the absence of a specific provision in the statute countenancing such a deplorable state of affairs a court is not justified in crediting the legislature with such an intention. We, therefore, hold that a suit which is based on a cause of action with respect to which adequate relief can only be granted by the civil court is cognizable by that court notwithstanding the fact that one of the reliefs prayed for by the plaintiff is for the declaration of his right to a tenancy holding. It is needless to observe that if a plaintiff simply with a view to oust the jurisdiction of the revenue court prays for reliefs other than a relief for a declaration of his right to a holding, and it is found that he is not entitled to the other reliefs, his suit will fail on the ground that the only relief to which he was entitled could be granted to him by the revenue court.

In the suit before us the plaintiffs alleged and proved that they were members of a joint Hindu family with the defendants and were as such entitled to a declara-

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tion of their right as to zamindari properties and tenancy holdings owned by the family, and for partition of the movables and cash belonging to the family. The cause of action on which the suit was based was, therefore, one with respect to which adequate relief could not be granted by the revenue court and the suit was rightly entertained by the court below. The appeal must, therefore, be dismissed.

A cross-objection has been filed by the plaintiff as regards the refusal by the court below to order Sukhdeo to render accounts of his dealings with the family property. It is settled law that in the absence of proof of misappropriation or fraudulent or improper conversion by the manager of a joint family a coparcener seeking partition is not entitled to call upon the manager to account for his past dealings with the family property. The coparcener is entitled only to an account of the joint family property as it exists on the date he demands partition. In the present case there was no reliable evidence to prove the charge of misappropriation or fraudulent conversion of the family property by Sukhdeo. The court below was, therefore, right in dismissing the claim for rendition of accounts. The cross-objection must, therefore, also fail.

The result is that we dismiss both the appeal and the cross-objection with costs.