APPELLATE CIVIL

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

1935 *February*, 14

BAQRIDI MIAN AND OTHERS (DEFENDANTS) *v.* BHAGWAN DIN (PLAINTIFF)*

Agra Tenancy Act (Local Act III of 1926), sections 99, 116, 197, 230—Grove-holder's suit for possession of the trees and timber of the grove—Cognizable by revenue court—Adequate relief by compensation for timber cut down by the zamindars—Distinctions between grove-land and grove—Jurisdiction—Civil and revenue courts.

A suit by a grove-holder against his landholder for declaration of right to and for possession of the trees and their produce is cognizable by the revenue court.

Where a grove-holder has been wrongfully dispossessed by his landholder, he can bring a suit under section 99 of the Agra Tenancy Act and recover compensation for the trees which constituted the grove under clause (*b*) (iii) of the section, inasmuch as trees planted by him constitute an improvement as defined in section 3(11) and by section 116 he is entitled, upon wrongful dispossession, to compensation for improvements made by him. If there is a claim for the recovery of the specific trees or timber, then also the suit is cognizable by the revenue court, either because the trees constitute a part of the holding and a suit to recover the trees is therefore comprised within a suit to recover the holding, or, in any view, because adequate relief by way of payment of compensation for the trees can be granted by the revenue court and therefore the cognizance of the suit by the civil court is barred by the explanation to section 230.

[*Per* BENNET, J.:—By definition grove-land and grove are, no doubt, different things; but a consideration of the provisions of section 197, sub-sections (*b*), (*c*), (*e*), as well as other sections of the Agra Tenancy Act shows that a grove-holder is the holder of the grove and also the holder of the grove-land and that his holding comprises both the grove and the grove-land. The scheme of the Agra Tenancy Act is that the grove should go with the land and be subject to the same incidents of tenure, and this is in accordance with the Transfer of Property Act under which trees follow the land in the case of a transfer of property.]

*Appeal No. 35 of 1933, under section 10 of the Letters Patent.

1935

BAQRIDI MIAN v. BHAGWAN DIN

[*Per* SULAIMAN, C.J.:—In the Agra Tenancy Act a clear distinction is drawn between grove-land and grove; the former would be a holding, but not the latter. The site belongs to the zamindar, and the grove-holder is the tenant thereof; whereas, he has proprietary interest in the trees of the grove which has been planted by him. A "grove-holder" is not identical with "holder of a grove"; the latter words would mean the person who owns a grove which exists, whereas a grove-holder may be a person to whom land has been let for the purpose of planting a grove, although no grove has yet come into existence.]

Mr. *Mushtaq Ahmad*, for the appellants.

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

BENNET, J.:—This is a Letters Patent appeal by defendants against a judgment of a learned single Judge of this Court by which the suit of the plaintiff has been decreed with costs in all courts. The lower appellate court had directed that the plaint should be returned to the plaintiff for presentation to the proper court, on the finding that the suit lay in the revenue court.

The plaint set out that in 1915 Mst. Aulia Bibi, who was then the zamindar and lambardar, gave permission to the plaintiff to plant trees on plot No. 598, having taken Rs.50 as nazrana. I may note that actually it has been held by the lower appellate court that this plot was a grove of the zamindars formerly and in 1915 a mere written permission was given to the plaintiff to plant the trees and there were only three old trees left on it at the time. The plaint set out that the plaintiff planted the trees and was recorded in the khasra for the grove as in possession although it was entered still as grove of the zamindars. In 1336 Fasli the name of the plaintiff was expunged from being in possession and the plaintiff made an application to the revenue court for rectification of the papers which was refused and the appeals of the plaintiff to the Collector and Commissioner were refused. The plaint sets out that after this decision of the revenue court the defendants obstructed the planting of trees by the plaintiff, and that the defendants are the zamindars. The plaintiff

1935

BAQRIDI MIAN v. BHAGWAN DIN

Bennet, J.

claims that he is still in possession of the trees planted by him as owner and that he is entitled to plant new trees on the plot aforesaid and to appropriate the produce of the trees planted by him; that the cause of action arose in October, 1930, the date of the decision of the Commissioner against the plaintiff. The plaintiff originally asked for a declaration that the plaintiff was the absolute owner of the trees, except three mango trees, standing on the land aforesaid and that he was entitled to plant trees on the said land. The last portion, that "the plaintiff was entitled to plant trees on the said land", was struck off on the 11th January, 1932, nine months after the plaint was filed. The second relief asked for was that a perpetual injunction should be issued to the defendants restraining them from offering obstruction to the planting of trees by the plaintiff on the land aforesaid and to the appropriating of the produce of the trees planted by the plaintiff. This relief was also amended by cancelling the words "to the planting of trees by the plaintiff on the land aforesaid".

In the written statement the defence was taken that Mst. Aulia Bibi was formerly a co-sharer and that there had been a partition and that after that partition the general attorney of Mst. Aulia Bibi, one Abdul Abbas, had executed a fictitious lease in favour of the plaintiff, and that after the decision of the revenue court the plaintiff's claim was not maintainable. An issue was framed as to whether the suit was cognizable by the civil court. The first court held that the suit was cognizable, but dismissed the suit on the ground that the general attorney had no authority to give the plaintiff permission to plant the trees, and held that it was not proved that Mst. Aulia Bibi had given any such permission. The lower appellate court reversed the finding on this point and held that Mst. Aulia Bibi had a right in 1915 to grant the permission and that a permission to the plaintiff was granted by the lambardar

to plant the trees in 1915. The court further found: "I therefore hold that the plaintiff planted the trees and he remained in possession till he was dispossessed by the defendants two years ago as has been stated by the patwari." Further, that the plaintiff had not sued for possession as a grove-holder and that he only wanted possession of the trees, and that he could not oust the jurisdiction of the revenue court by merely asking for possession of stray trees. The learned single Judge of this Court stated: "It does not appear that the land was let or granted to the plaintiff for the purpose of planting a grove . . . He was merely granted permission to plant trees on the payment of *nazrana* to the lambardar, and he does not claim any interest in the land under the trees. There is nothing to show that the lambardar intended to have a grove planted in that plot." The learned single Judge considered that this was not a case to which chapter XII of the Agra Tenancy Act, Act III of 1926, in regard to grove-holders would apply, and that it was a case of permission to plant trees and not to plant a grove. Accordingly he considered that the civil court had jurisdiction. I do not consider that the learned single Judge has correctly quoted the finding of fact of the lower appellate court. The lower appellate court found as a fact that the plaintiff was a grove-holder. The written theka is on the record and it clearly says that the plot in question was formerly the zamindar's grove and that permission was given to the plaintiff to plant trees on it. I do not think that any distinction can be drawn between a grant of land for planting trees on it and a grant of land for planting a grove. Section 196 of the Agra Tenancy Act states as follows: "A grove-holder is a person to whom land has been let or granted by a landlord or a permanent tenure holder for the purpose of planting a grove, or who has, in accordance with local custom entitling him to do so or with the written permission of the landlord or the permanent tenure holder, planted a

1935

BAQRIDI MIAN v. BHAGWAN DIN

Bennet, J.

grove on land held by him as tenant (not being a permanent tenure holder, a fixed-rate tenant or a sub-tenant) or as rent-free grantee, not being a grantee to whom the provisions of section 185 or section 186 apply, of such landlord or permanent tenure holder, as the case may be; provided that where the permission was granted prior to the commencement of this Act, the permission need not have been in writing and may have been either express or implied." I consider that the case comes under the first four lines of this section and that the plaintiff was a grove-holder to whom the land had been let by the landlord for the purpose of planting a grove.

A distinction has, however, been put forward by learned counsel for the plaintiff between grove-land and a grove, and the argument of learned counsel is that the Agra Tenancy Act deals only with grove-land and that a suit in regard to the trees on such land which constitute a grove is a suit within the jurisdiction of the civil court. Learned counsel relies on the definition in section 3(15) which is as follows: "Grove-land means any specific piece of land in a mahal having trees planted thereon in such numbers that when full grown they will preclude the land or any considerable portion thereof being used primarily for any other purpose, and the trees on such land constitute a grove." He further points out that in section 3(2) "Land means land which is let or held for agricultural purposes or as grove-land or for pasturage." He argues that the remedy in the revenue court under section 99 of the Tenancy Act is confined to dispossession from a holding and he argues that the holding is the holding of the grove-land and that the holding does not embrace the trees. He states that the trees have been planted by the plaintiff and that the rights in the trees are apart from the holding and that the question in regard to those rights is one solely for the civil courts. It appears to me that on this view of the Tenancy Act the position would be very anomalous. Chapter XII deals with grove-holders and

according to the theory of learned counsel the chapter regulates only the rights of grove-holders in the grove-land. I am unable to agree with that view for the following reasons. In section 197 there is detailed provision for the rights of grove-holders. In sub-section (*b*) it is provided that the interest of a grove-holder shall be transferable by voluntary transfer or in execution of a decree of a civil or revenue court or otherwise. The words used are "the interest of a grove-holder". If the view of learned counsel were correct I should expect to find words such as "the interest of a grove-holder in the grove-land". This sub-section therefore appears to me to deal with the whole interest of a grove-holder as a grove-holder; not merely an interest in the grove-land but also an interest in the trees of the grove. Similarly in sub-section (*c*) it is provided that the interest of a grove-holder shall devolve as if it were land. I understand that this is a provision for the whole interest of the grove-holder not only in the grove-land but also in the trees which constitute the grove. In sub-section (*e*) there is a provision that "a grove-holder shall not be liable to ejectment by his landholder except under section 84 or on the ground that he holds under a lease the term of which has expired, etc.". Now learned counsel relied on the terms of section 84, sub-section (1): "A tenant, not being a permanent tenure holder or a fixed-rate tenant, shall be liable to ejectment from his *holding* on the suit of the landholder, etc." On the other hand it appears to me that the person who is ejected is the tenant, and in section 3, sub-section (6), "tenant" is defined as including a grove-holder. The person, therefore, who is ejected in the case of a grove-holder is the grove-holder and I understand that by ejectment of a grove-holder is meant the ejectment of a grove-holder from all the interest which he possesses as grove-holder and not merely from the interest which he possesses in the grove-land. I understand that the Act contemplates the ejectment of a

1935

BAQRIDI MIAN v. BHAGWAN DIN

Bennet, J.

grove-holder under section 84 from all his interest as grove-holder in regard to his land and in the trees constituting the grove. There is further provision made in section 116 for compensation in case of ejectment of a tenant who has made an improvement. Now "improvement" is defined in section 3, sub-section (11) of the Act as including the planting of trees; and in chapter VII after referring to certain classes of tenants, there is a provision in section 112 that no other tenant shall make any improvement except with the written consent of the landholder. Under section 112 and section 3(11)(c) a tenant who has planted trees on his holding with the written consent of the landholder is a tenant who has made an improvement and one who is entitled to compensation for that improvement under section 116 in case of his ejectment under section 84. I consider that either in the case of the grove-holder to whom land was let for the purpose of planting a grove, or in the case of a grove-holder who obtained permission to plant a grove on his existing holding, both of which cases are covered by section 196, compensation for improvement on ejectment could be given under section 116. Now when we come to the case of the remedy open to the plaintiff it appears to me that under section 99 he may obtain possession of the holding, and also in case any injury has accrued to the trees during the period of his dispossession he may obtain compensation for wrongful dispossession under section 99(1)(ii). And in case for any reason he could not get a decree for possession under section 99(2), he may get compensation for the improvement under sub-section (1)(iii). These provisions in section 99 appear to me to give the plaintiff an ample remedy in the revenue court. On the other hand if the plaintiff claims that he is still in possession he has sufficient remedy in a declaration under section 121. Further it appears to me that under section 230, Explanation, the plaintiff cannot come to the civil court merely by altering his

plaint if the relief which the revenue court could have granted him was adequate.

The argument of learned counsel for the plaintiff involves the proposition that a grove-holder is not the holder of a grove but only the holder of the land on which a grove exists. I consider that a grove-holder is the holder of the grove and also the holder of the grove-land and that his holding comprises both the grove and the grove-land. A "holding" is defined in section 3(8) as a parcel or parcels of land held under one tenure, or one lease, engagement or grant. The scheme of the Tenancy Act is that the grove should go with the land and be subject to the same incidents of tenure. This scheme is in accordance with the Transfer of Property Act which provides in section 8: "Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. Such incidents include, where the property is land, . . . all things attached to the earth." This expression "attached to the earth" is defined in section 3 of the Transfer of Property Act as meaning "(*a*) rooted in the earth, as in the case of trees and shrubs". Trees therefore follow the land in the case of a transfer of property under the Transfer of Property Act. I am of opinion that the same scheme is intended in chapter XII of the Agra Tenancy Act and that in section 197(*b*) and (*c*) the interest of the grove-holder when transferred or when it devolves by succession comprises the interest not only in the land of the grove but also the interest in the grove itself. I consider that in this section 197, sub-section (*e*) also relates to the whole interest of the grove-holder in the grove and in the grove-land, and that in the case of a transfer by ejectment, an ejectment under section 84 is in regard to the grove-land and also in regard to the grove. I consider that in this interpretation the Agra Tenancy Act is in harmony with the

Bennet, J.

1935

BAQRIDI MIAN v. BHAGWAN DIN

Bennet, J.

Transfer of Property Act. In my view a holding must include the improvements which are executed on the holding. In section 3(11)(*c*) it is stated that the planting of trees is an improvement on a holding if it is consistent with the purpose for which it was let. In the present case where the land is let for the planting of trees the planting of trees is obviously consistent with the purpose for which the land was let, and therefore the planting amounts to an improvement. I do not consider that when planted the trees can be separated from the holding. In section 94 there is a period fixed for the delivery of possession under a decree of ejectment, the period being not before the 1st of April and not after the 3rd of June. In section 96 there is a provision as follows: "A tenant against whom a decree or order for ejectment has been passed shall not sell, cut or remove any tree upon his holding unless there is a contract or local custom entitling him to do so." This section shows that it is intended by a decree of ejectment from a holding that the possession of the trees should also go with the delivery of possession of the holding, and accordingly for the time between the passing of the decree and delivery of possession there is the proviso that the tenant may not remove the trees. I think therefore that in the case of a decree for ejectment under section 84 of the Act passed against a grove-holder this section 96 would operate to prevent the grove-holder from removing any trees before delivery of possession is made, and, when delivery of possession is made, what would be delivered would be not merely the possession of the grove-land but the possession also of the grove.

Reference was made to a ruling in *Bahadur* v. *Maharaja of Benares* (1), and it was argued that in the present case under section 268 the appeal lay in any case to the District Judge and therefore the District Judge should have disposed of the suit. But if the

(1) (1931) I.L.R., 53 All., 636.

present suit had been filed in the revenue court there is no reason to suppose that any plea of jurisdiction would have been raised or that any question of proprietary right would have been raised as there is no question of proprietary right raised in the plaint. Accordingly it cannot be said that section 268 gave the District Judge jurisdiction to decide the appeal.

My view is, therefore, that the decision of the lower appellate court was correct, and I would allow this appeal with costs and restore the judgment of the lower appellate court and return the plaint to the plaintiff for presentation to the proper court.

SULAIMAN, C.J.:—I concur in the actual order proposed, because even under the amended reliefs as they stand, the plaintiff is seeking to maintain his right to appropriate the produce of the trees, which is tantamount to claiming a title in the grove as it stands. I also agree that as it is not clear that if a suit had been filed in the revenue court an appeal would have lain to the District Judge, section 268 is therefore inapplicable But I am inclined to the view that in the Agra Tenancy Act there is a clear distinction drawn between what is defined as a "grove-land" and what is defined as a "grove". The word "tenant" as used in the Tenancy Act is certainly very wide and includes grove-holders and thekadars as well; but the word "holding" in section 3(8) is used in a very narrow sense, and it only means a parcel or parcels of "land", and also includes the interest of a thekadar. Now the word "land" has been especially defined in section 3(2) as meaning land which is let or held for agricultural purposes, or as grove-land or for pasturage. Therefore the holding may be a parcel or parcels of land let or held as a "grove-land". In section 3(15) "grove-land" itself is defined as meaning any specific piece of land having trees planted thereon, etc. and then it is laid down that the trees on such land constitute a "grove". Then in the very sub-section two words "grove-land" and "grove"

1935

BAQRIDI MIAN v. BHAGWAN DIN

Sulaiman, C.J.,

have been used, and the legislature has made it clear that the specific piece of land having trees planted thereon is grove-land and the trees on such land constitute a grove. It follows, therefore, that there is a distinction between these two words. Grove-land means the land on which the trees stand and which would, therefore, according to the definition of "holding" be a holding, whereas the grove, namely the trees which stand on it, would not be a holding. Section 196 defines a grove-holder as a person to whom land has been let or granted by a landlord for the purpose of planting a grove, or who has planted such a grove. It is obvious that the definition of a "grove-holder" is not identical with the words "holder of a grove", for the latter words would mean the person who owns a grove which exists, whereas a grove-holder may be a person who possesses the rights of a grove-holder, although no grove has yet come into existence. He is a grove-holder if the land has been let or granted to him by the landlord for the purpose of planting a grove, even though he has not yet planted such a grove. Section 197(*b*) and (*c*) no doubt lay down that the interest of a grove-holder shall be transferable and heritable as land. It is not necessary in these sub-sections to make a separate provision for trees because they are transferable and heritable as property. Similarly section 197(*e*) provides that a grove-holder shall not be liable to ejectment by his landholder except under section 84, etc. It does not expressly say liable to ejectment from what. That has to be gathered from the provisions of section 84, under which alone a grove-holder can be ejected. Section 84 provides for the ejectment of a tenant from his "holding". The use of the word "holding", therefore, in section 84 restricts the scope of that section to cases of ejectment from a holding, and a "holding", as pointed out above, means "grove-land". As the definition of "grove" stands, a grove would not be a holding because it is comprised of the trees standing on the

land and is not the specific piece of land itself. Again section 197(*h*) refers to a person who has become a grove-holder *in respect of land* of which he is a tenant or grantee, and lays down that he shall hold *such land* as grove-holder in supersession of all subsisting rights, etc. The Transfer of Property Act, of course, has no application to this case because it is not a case of transfer of any property, in which event there may be a presumption that things attached to the earth are also transferred with the property, but section 3 of the Transfer of Property Act points out that immovable property does not include standing timber, growing crops or grass; that is to say, the standing timber is something distinct and separate from the immovable property itself. It would, therefore, seem to follow that the land which has been let to a person for the purpose of planting a grove or on which he has planted a grove is grove-land which is a holding from which the grove-holder can be ejected, but the trees when they come into existence constitute a grove in the grove-land. The site belongs to the zamindar and has been let to the grove-holder, of which he is a tenant. The grove has been planted by the tenant and he should have proprietary interest in the trees that stand on the land.

There is, however, section 116 of the Agra Tenancy Act under which a tenant who has been wrongfully dispossessed by his landholder is entitled to bring a suit for compensation for the dispossession. I agree that having regard to the definition of "improvement" in section 3(11), "improvement" includes the planting of trees. It must, therefore, be conceded that a suit for compensation, brought by a grove-holder in respect of the trees standing on his grove-land from which he has been dispossessed, can be brought under section 116 of the Agra Tenancy Act, or to be more accurate, the compensation can be claimed when a suit under section 99 is brought.

1935

BAQRIDI MIAN v. BHAGWAN DIN

Sulaiman, C.J.

Now so far as the claim for the recovery of compensation for the trees which constituted the grove is concerned, there being a specific provision for such a suit in section 99(*b*)(iii), a suit in the civil court would be barred under section 230 of the Agra Tenancy Act. The learned counsel for the plaintiff contended before us that a suit for the recovery of the specific timber is not covered by section 99 of the Agra Tenancy Act and is, therefore, not barred by the provisions of the Tenancy Act. No doubt, before the new Tenancy Act, a suit for the recovery of possession of a grove as well as for compensation for the trees cut away by the landholder, or for the rights to remove the timber, would have lain in the civil court. Under the Agra Tenancy Act a suit for recovery of groves and for compensation is exclusively cognizable by the revenue courts. The question is whether the cognizance of the suit for recovery of specific timber also has been taken away.

I quite agree that it would be very anomalous to hold that while a tenant can sue in a revenue court for the recovery of possession of the grove and for compensation of the trees cut away, he is bound to sue in the civil court if he were to claim to remove the timber from the land. In order to avoid such an anomaly I am prepared to put a more liberal construction on section 230 of the Act and hold that the granting of compensation by the revenue court for the trees from which the tenant has been dispossessed is an adequate relief in place of the relief for the possession of the specific timber standing on the land. The Explanation to section 230 provides that where adequate relief might be granted by the revenue court it is immaterial that the relief asked from the civil courts may not be identical with that which the revenue court could have granted. It would, therefore, follow that compensation for the trees can be given by the revenue court. A suit for the recovery of the actual timber is not cognizable by the civil courts because adequate relief can be granted by

the revenue court to the tenant who has been dispossessed. On this narrow ground, I agree that the order of the lower appellate court was right.

FULL BENCH

Before Sir Shah Muhammad Sulaiman, Chief Justice, Justice Sir Charles Kendall and Mr. Justice Rachhpal Singh

SHIAM LAL (PLAINTIFF) *v.* ABDUL RAOOF (DEFENDANT)* 1935 *February*, 18

Limitation Act (IX of 1908), article 2—"Act alleged to be in pursuance of any enactment"—Meaning and scope—Act in good faith, though in excess of powers—Suit for compensation for alleged false report by a constable out of grudge.

Article 2 of the Limitation Act is wide enough to cover the case of a person who has done an act in good faith and with a *bona fide* belief that he had power to do so in pursuance of an enactment, although as a matter of fact he had no such power or the act was in excess of his powers. But where a person acts dishonestly and in bad faith, knowing that he had no right to do that act under any enactment and merely pretending to act under an enactment, he can not bring himself within the scope of article 2.

Mr. *B. Malik*, for the appellant.

Mr. *Muhammad Ismail*, for the respondent.

SULAIMAN, C.J., KENDALL and RACHHPAL SINGH, JJ.:—This is a plaintiff's appeal arising out of a suit for damages on the ground that the defendant, a police constable, who cherished a grudge against the plaintiff, made a false report on the 28th of August, 1927, at the police station stating that the plaintiff was leading a riotous mob. It was not till the 15th of March, 1928, that this first information report was produced in court when the plaintiff became aware of its existence. The suit was filed on the 28th of August, 1928. The defendant, in addition to denying the allegation that there was any malice or bad faith on the part of the

*Second Appeal No. 1149 of 1930, from a decree of P. C. Plowden, District Judge of Bareilly, dated the 16th of April, 1930, confirming a decree of F. Rustamji, Additional Subordinate Judge of Bareilly, dated the 29th of July, 1929.