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ousted by anything in section 230 or the fourth schedule of the Tenancy Act. As to whether the civil court has jurisdiction there can be no doubt that under section 9 of the Civil Procedure Code it has jurisdiction to try all suits of a civil nature. It cannot be denied that a claim for profits by one co-sharer of an occupancy holding against another is a suit of a civil nature. This being so, the suit was in our opinion rightly instituted in the court of the Munsif.

It appears that the plaint was subsequently filed in a revenue court which expressed the opinion that the suit was not cognizable by it. Accordingly the Collector made the present reference under section 267. We take it that the plaint is still in the revenue court which shall return it to the plaintiff for presentation to the civil court competent to try it.

The reference is accordingly answered as above.

*Before Mr. Justice Niamat-ullah and Mr. Justice Allsop*

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 January, 9

QUDSIA JAN (PLAINTIFF) v. ZAHID HUSAIN AND OTHERS  
 (DEFENDANTS)\*

*Agra Tenancy Act (Local Act III of 1926), section 267—Reference to High Court—Special jurisdiction on reference—Not affected by the fact that at a previous stage of the case a single Judge of the High Court has in second appeal already decided the question of forum—Suit by one co-tenant against another for his share of the profits—Cognizable by civil court—Agra Tenancy Act, sections 99, 230—Jurisdiction—Civil and revenue courts.*

The plaintiff, who was one of several co-tenants in an expropriary tenure, brought a suit in the civil court against his co-tenants for his share of the profits of that tenure. The Munsif held that the suit was cognizable by the revenue court; on appeal the District Judge was of the contrary opinion; on second appeal, which was treated as a revision, a single Judge of the High Court agreed with the Munsif's opinion. The plaint was then presented to the revenue court, which held that the suit was cognizable by the civil court and dismissed

\*Miscellaneous Case No. 512 of 1934.

it. On appeal to the Commissioner, he made a reference to the High Court under section 267 of the Agra Tenancy Act:

*Held*, that the judgment of the single Judge of the High Court, which had held that the suit was cognizable by the revenue court, was no bar to the Bench hearing the reference coming to a contrary conclusion. The Bench was not acting in the exercise of any appellate jurisdiction but in the exercise of a special jurisdiction conferred by section 267 of the Agra Tenancy Act. That section had been enacted to meet the requirements of cases like the present in which conflicting opinions are entertained by civil and revenue courts as regards the proper forum; and it does not affect the position if one of such courts is a court of appeal, even a High Court in second appeal; the order passed upon the reference is, under clause (5) of the section, binding on all courts subordinate to the High Court or to the Board of Revenue.

*Held*, also, that the suit did not come under section 99 of the Agra Tenancy Act, and was cognizable by the civil court.

Mr. *Hyder Mehdi*, for the applicant.

Mr. *A. P. Dube*, for the opposite parties.

NIAMAT-ULLAH and ALLSOP, JJ.:—This is a reference under section 267 of the Agra Tenancy Act by the Commissioner of Allahabad. The plaintiff instituted a suit against his co-sharers in an exproprietary tenure, in the court of the Munsif of Allahabad, for his share of the profits. The Munsif returned the plaint for presentation to the revenue court, holding that the suit was within the exclusive jurisdiction of the latter court. The plaintiff appealed to the District Judge, who took a contrary view and held that the suit had been rightly instituted in the civil court. A second appeal was preferred to this Court and came up for hearing before a learned single Judge who treated the appeal as a revision on the ground that no appeal lay to this Court. That learned Judge held that the suit was cognizable by the revenue court as held by the Munsif. Accordingly he set aside the District Judge's order and restored that of the Munsif. The plaintiff then presented his plaint in the revenue court. The Assistant Collector before whom the suit came on for hearing dismissed it

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on the ground that the revenue court had no jurisdiction. The plaintiff went in appeal to the court of the Commissioner, who has made the present reference under section 267 of the Agra Tenancy Act. We are of opinion that the learned Commissioner has adopted the proper procedure in view of the opinion expressed by a learned single Judge of this Court.

It is argued by the learned advocate for the defendants that the order of the learned single Judge of this Court already referred to is a bar to this Bench taking a contrary view, and that whatever may be the correct law on the subject, it must be held for the purposes of this case that the revenue court has jurisdiction. We are unable to accede to this contention. Section 267 of the Agra Tenancy Act has been enacted to meet the requirements of cases in which conflicting opinions are entertained by civil and revenue courts as regards the proper forum. The opening words of that section make it perfectly clear that "Where either a civil or a revenue court is in doubt whether it is competent to entertain any suit, application, or appeal, or whether it should direct the plaintiff, applicant or appellant to file the same in a court of the other description, the court may submit the record, with a statement of the reasons for its doubt, to the High Court." The Commissioner did entertain a doubt and has submitted the case with his own opinion to the effect that the suit is cognizable by the civil court. Sub-section (4) of section 267 further provides that "On any such reference being made, the High Court may order the court either to proceed with the case, or to return the plaint, application or appeal for presentation to such other court as it may declare to be competent to try the same." Sub-section (5) contains the mandatory provision that "The order of the High Court shall be final and binding on all courts subordinate to it or to the Board of Revenue."

That a single Judge of this Court sitting in appeal or revision from the order of a subordinate civil court is a civil court within the meaning of section 267 of the Agra Tenancy Act can admit of no doubt. We are sitting not in the exercise of our jurisdiction as a court of first or second appeal but in the exercise of a special jurisdiction conferred by section 267 of the Agra Tenancy Act, which as already stated clearly declares that such order of this Court is final and binding on all courts subordinate to the High Court. For the purposes of section 267 of the Agra Tenancy Act it does not matter that doubt as to jurisdiction arises from conflicting opinions expressed by a court of appeal, even this Court in the exercise of its jurisdiction as a civil court, and by the revenue court. Once there is a doubt created by conflicting orders of civil and revenue courts the special jurisdiction of this Court conferred by section 267 of the Agra Tenancy Act can be invoked and can be exercised with the result stated in sub-section (5), section 267. We are clearly of opinion that the defendants' contention that the order of the learned single Judge of this Court is a bar has no force.

On the merits of the case much need not be said as this Bench has already held in a similar case, viz. *Jumna Das v. Misri Lal* (1), that the jurisdiction in such cases lies with the civil courts. The argument put forward by the learned advocate for the appellant in reference to section 99 of the Tenancy Act has been disposed of by our judgment in that case. We need not repeat the grounds on which our decision in that case proceeds.

The result is that we hold that the plaintiff's suit is cognizable by a civil court. Accordingly we direct that the plaint be returned to the plaintiff for presentation to the court of the Munsif, East Allahabad, who has jurisdiction to entertain it.

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