

Accordingly we allow this appeal to this extent that we set aside the decrees of the courts below and we substitute a decree in favour of the plaintiff for Rs.400 with interest at 6 per cent. per annum from the date of suit till the date of realisation, and we direct that the parties should pay their own costs throughout.

### MISCELLANEOUS CIVIL

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

JUMNA DAS AND ANOTHER (PLAINTIFFS) v. MISRI LAL AND OTHERS (DEFENDANTS)\*

1934  
October, 1

*Agra Tenancy Act (Local Act III of 1926), sections 99, 230—  
Suit by one co-tenant against another for share of profits—  
Cognizable by civil court—Jurisdiction—Civil and revenue  
courts.*

A suit by one of several co-tenants of an occupancy holding for his share of the profits of that holding against the other co-tenants is cognizable by the civil court.

Where one of several co-tenants in a holding is solely in possession he can not, by that fact alone, be considered to be in wrongful possession, nor can the other co-tenants be said to have been wrongfully dispossessed from the holding; for, possession of one co-sharer is possession of all. So, the suit does not come under section 99 of the Agra Tenancy Act; and as the fourth schedule of the Act makes no mention of such a suit, section 230 of the Act does not oust the jurisdiction of the civil court which it has under section 9 of the Civil Procedure Code.

*Dr. N. P. Asthana*, for the applicant.

The reference was heard *ex parte*.

NIAMAT-ULLAH and ALLSOP, JJ.:—This is a reference under section 267 of the Agra Tenancy Act by the Collector of Agra. It appears that a suit was instituted by one of several co-sharers of certain occupancy holdings for profits in the court of the Munsif, Agra, who returned the plaint for presentation to the revenue court on the ground that the suit is one which is within the exclusive jurisdiction of the revenue court. The learned Munsif made a reference to section 99 of

\*Miscellaneous Case No. 349 of 1934.

the Agra Tenancy Act, III of 1926, besides section 230 of the same Act. The defendant is not represented in this Court and it is not clear whether it was on his objection that the learned Munsif returned the plaint for presentation to the proper court. We do not find anything in section 99 which may be applicable to the circumstances of this case. Perhaps the learned Munsif thought that the suit was one by a co-sharer in an occupancy holding for compensation for wrongful dispossession by another co-sharer who is holding under the same landlord as the plaintiff. If the learned Munsif was influenced by this consideration, we think that he proceeded on a far-fetched ground. Where one of several co-sharers in an occupancy holding or other tenure is solely in possession he cannot be considered to be in wrongful possession; nor can the co-sharers suing for profits be said to have been wrongfully dispossessed from the holding or tenure. Possession of one co-sharer is possession of all, who should be deemed to be in constructive possession through the co-sharer who is in actual possession by cultivating the land or by receipt of rents from sub-tenants.

In our opinion section 230 of the Agra Tenancy Act, III of 1926, is decisive on the point. That section declares that suits and applications of the nature specified in the fourth schedule shall be heard and determined by the revenue courts, and no court other than a revenue court shall, except by way of appeal or revision as provided in that Act, take cognizance of any such suit or application, 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. We are thus thrown back on the fourth schedule which does not make any mention of a suit by a co-sharer of an occupancy holding against another co-sharer for profits as one within the jurisdiction of the revenue court. It follows that the jurisdiction of the civil court, if it otherwise has jurisdiction, is not

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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*

1935  
 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.