

APPELLATE CIVIL

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

BAJI LAL AND OTHERS (DEFENDANTS) *v.* TOTA RAM
(PLAINTIFF)*

1934
April, 13

*Agra Tenancy Act (Local Act III of 1926), sections 243, 270, 271
—"Question of proprietary right"—Suit by co-sharer for rent
against a tenant—Tenant's plea of payment in good faith to a
third person, lambardar—Plaintiff's title as co-sharer not
denied—Whether a question of proprietary right in issue.*

In a suit for rent brought by a co-sharer the defendant pleaded that he had paid the rent in good faith to a third person, namely the lambardar, and denied his liability to pay rent to the plaintiff, but admitted the plaintiff's status as a co-sharer: *Held* that no "question of proprietary right" within the meaning of section 243 of the Agra Tenancy Act was in issue, and a second appeal did not lie to the District Judge. The only point in issue was whether the plaintiff co-sharer was entitled to collect the rent or whether the lambardar was entitled to do so.

The Agra Tenancy Act, 1926, makes a distinction between the procedure under section 270 when the tenant pleads payment in good faith to a third person and the procedure under section 271 when he raises a plea of proprietary right. Under section 270 the revenue court is not empowered to decide any question of title between the plaintiff and the third person, but must confine itself to deciding the question of the payment of rent in good faith to such third person; such a question is not a question of proprietary right, and the revenue court has no jurisdiction to decide a question of proprietary right, even if it is raised indirectly, for the purpose of deciding the question of the payment in good faith to the third person.

Har Prasad v. Tajammul Husain (1), declared obsolete.

Mr. *Haribans Sahai*, for the appellants.

Mr. *Girdhari Lal Agarwala*, for the respondent.

SULAIMAN, C.J., and KING, J.:—The point for decision in this appeal is whether a second appeal lay to the District Judge under section 243 of the Agra Tenancy Act, 1926. The suit was filed in the court of an Assistant Collector of the second class, for arrears of rent, upon

*Appeal No. 56 of 1932, under section 10 of the Letters Patent.
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the allegation that the plaintiff was the zamindar and the defendant Baji Lal was his tenant and that the latter had failed to pay the rent due for the period in suit. The defence was a denial of the defendant's liability to pay rent to the plaintiff and a plea that the defendant had paid the rent in good faith to one Ajit Singh who was the lambardar of the mahal.

In accordance with section 270 of the Tenancy Act, the trial court impleaded Ajit Singh as a defendant in the suit and came to a finding that Baji Lal had paid the rent in question to Ajit Singh in good faith, and accordingly dismissed the suit.

The plaintiff then appealed to the Collector, who reversed the decision of the trial court and held that although Baji Lal had paid the rent to Ajit Singh, such payment had not been made in good faith. The Collector remarked that the plaintiff had obtained a decree for arrears of rent for the three years preceding the period in suit against Baji Lal, so Baji Lal could not be held to be acting in good faith if he paid the rent to Ajit Singh.

The defendants then filed a second appeal in the court of the District Judge. The District Judge held that no appeal lay to him as no question of proprietary right had been in issue between the parties in the court of the Collector and no such question was in issue in second appeal. The defendants then appealed to this Court and a learned single Judge upheld the view taken by the District Judge and dismissed the appeal.

The question whether a second appeal lay to the District Judge depends upon whether a "question of proprietary right" had been in issue between the parties claiming such right in the first appellate court and was in issue in the second appeal.

The District Judge and the learned single Judge of this Court both took the view that no question of proprietary right was in issue in the court of the Collector or in the second appeal which was filed in the court of the District Judge. They held that the only point in issue

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was whether the plaintiff was entitled to collect the rent or whether the lambardar was entitled to collect the rent, and came to the conclusion that this was not "a question of proprietary right" within the meaning of section 243.

The plaintiff's proprietary right as a co-sharer was never disputed by Baji Lal or by Ajit Singh the lambardar. The only dispute was whether the plaintiff as a co-sharer was entitled to collect the rent from Baji Lal or whether Ajit Singh as lambardar was entitled to collect the rent from Baji Lal. In our opinion, the District Judge and the learned single Judge of this Court were right in holding that this was not a question of proprietary right. Section 270 clearly applied to the facts of this case. The tenant Baji Lal pleaded that he had paid the rent of the holding to a third person namely Ajit Singh, to whom he had in good faith been paying the rent of the holding up to the date of the institution of the suit. The trial court quite correctly applied the provisions of section 270 and impleaded Ajit Singh as a defendant in the suit and held that Baji Lal had paid the rent in good faith to Ajit Singh.

It has been argued that the question whether the plaintiff was entitled to recover the rent from Baji Lal was a question of proprietary right. But we are not inclined to accept this contention. A distinction has been made between the procedure under section 270 when a tenant pleads that the opposite party is not his landholder and the procedure under section 271 when a party raises a plea of proprietary right. Section 271 may not be exhaustive of all cases in which a question of proprietary right may be raised in a revenue court, but it furnishes some instances of what is meant by raising a plea of proprietary right. If Baji Lal had claimed that he was not a mere tenant but was the proprietor of the plot, then clearly he would have raised a question of proprietary right and under section 271 the revenue court would have framed an issue on the question of proprietary right and would have submitted

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the issue to the civil court for decision. This procedure was not followed and we think it could not have been followed in this case because in our opinion no question of proprietary right had been raised which could have been sent to the civil court for decision.

The learned counsel for the appellants has relied strongly upon the case of *Har Prasad v. Tajammul Husain* (1). In that case a suit for ejectment had been instituted in the revenue court and the defendants pleaded that they were not the plaintiff's tenants but that they were lessces from other persons and the plaintiff had no right to sue. It was held that this was a question of proprietary title which was in issue in the court of first instance and was in issue in the appeal. Hence an appeal lay to the civil court. The learned Judges observed that the Act itself indicates what is meant by a question of proprietary title. Section 198 of the Tenancy Act of 1901 occurred under the heading of "Questions of proprietary title in revenue courts" and dealt with a case in which the defendant pleaded that the relation of landholder and tenant did not exist between the plaintiff and himself on the ground that he actually and in good faith paid the rent of the holding to some third person. That was the plea which had been raised in that case and the learned Judges held that it was clearly a question of proprietary title which was in issue. The language of section 198 (which corresponds to the present section 270) and of section 199 of the old Act (which corresponds to section 271 of the present Act) has been extensively changed. It is true that both the sections 270 and 271 do occur under the heading "Questions of proprietary right in revenue court". Therefore, the argument which appealed to the learned Judges in the case cited still has some force. Nevertheless, we are not able to hold that in the present case the question of the right of collecting rent which was in issue in the present case should be held to be a question of

(1) (1918) 16 A.L.J., 239.

proprietary right. If we look at the language of section 270 itself, we find that when the defendant pleads payment of the rent in good faith to a third person, then that third person is made a defendant in the suit and the revenue court has to decide the question of the payment of rent in good faith to such third person. The extent of the inquiry to be made by the revenue court is clearly indicated by the language of the section. The revenue court is not empowered to decide any question of title between the plaintiff and the third person, but must confine itself to deciding the question of the payment of rent in good faith to such third person. In our opinion such a question is not a question of proprietary right and the revenue court has no jurisdiction to decide a question of proprietary right, even if it is raised indirectly, for the purpose of deciding the question of the payment of rent in good faith to the third person. Sub-section (2) of section 270 also contemplates a *subsequent* suit between the landholder and the third person for the determination of the proprietary right in the holding. This shows that the revenue court in deciding the question which it has to decide under section 270 has no jurisdiction to determine the proprietary right in the holding between the plaintiff and the third person. We hold that in view of the change in the statute the ruling relied upon in *Har Prasad v. Tajammul Husain* (1) is no longer good law. We may refer to a decision of the Board of Revenue in *Ramdaur v. Partap Narain Singh* (2), decided on the 14th November, 1930. In that case it was held that section 271 of the Agra Tenancy Act, 1926, only applies in cases in which the defendant pleads that he is not a tenant but has a proprietary right in the land. Where the plea simply is that an outsider is the proprietor, the section will not apply. This supports the view which we take that the defendant's pleas that he was not liable to pay the rent to the plaintiff, whom he acknowledged as a co-sharer, and that he had in fact paid

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(1) (1918) 16 A.L.J., 239.

(2) (1930) 15 Revenue Decisions, 476.

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the rent in good faith to the lambardar, did not raise a "question of proprietary right" within the meaning of section 243.

In our opinion, the District Judge and the learned single Judge of this Court have taken a correct view that no second appeal lay to the District Judge and we accordingly dismiss the appeal with costs.

APPELLATE CRIMINAL

Before Mr. Justice Thom and Mr. Justice Collister

EMPEROR v. BACHCHA*

1934
April, 18

Criminal Procedure Code, section 510—Chemical Examiner's report—Whether he must be called as a witness—Cocaine smuggling case—Criminal Procedure Code, sections 103, 165—Irregularities in search by police officer without a search-warrant.

Although cases may arise—particularly in a matter of arsenic poisoning—in which it may be necessary in the interests of justice that the Chemical Examiner be called and examined as a witness, the general proposition that the Chemical Examiner must be called in all cases in which a chemical analysis has been made and in which the result of such analysis is a determining factor in the case is not sound. *Emperor v. Habbu* (1), disapproved.

So, where in a cocaine smuggling case the Chemical Examiner's report showed that the substance found on the accused contained more than 3 per cent. of cocaine admixed with novocaine, and the admission of this report was not objected to, nor was any request made on behalf of the accused that the Chemical Examiner be sent for and put into the witness-box, it was held that the conviction was sound, although the Chemical Examiner was not called as a witness.

Where the memorandum recorded under section 165 of the Criminal Procedure Code by a police officer prior to making a search stated that information had been received of the possession of illicit liquor and apparatus for making it by the accused, and therefore he was going to search his person, but in his statement in court the police officer stated that he had received

*Criminal Appeal No. 124 of 1934, by the Local Government, from an order of F. A. Khan, Sessions Judge of Fatchpur, dated the 20th of November, 1933.