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plea was not advanced before the Board; but the fact that it was raised in the High Court, coupled with the admission which preceded it, throws a strong light on the effect which the whole evidence had produced.

Their Lordships are of opinion that the order for winding up this company was justified both in fact and in law, and that this appeal should fail. They will humbly advise His Majesty accordingly. The appellants will pay the costs of the appeal.

Before parting with this case their Lordships desire to call attention to the great difficulty which is occasioned both to persons charged with fraud or other improper conduct, and to the tribunals which are called upon to decide such issues, if the litigant who prefers the charges is not compelled to place on record precise and specific details of those charges. In the present case the petitioner ought not to have been allowed to proceed with his petition and seek to prove fraud, unless and until he had, upon such terms as the Court thought fit to impose, amended his petition by including therein full particulars of the allegations which he intended to prove. Such cases as the present will be much simplified if this practice is strictly observed and insisted upon by the Court, even if, as in the present case, no objection is taken on behalf of the parties who are interested in disproving the accusations.

Solicitors for the appellants: *T. L. Wilson & Co.*

Solicitors for the respondents: *Douglas Grant & Dold.*

## REVISIONAL CIVIL

*Before Mr. Justice Niamat-ullah*

1937  
January, 19

JAGDAMBA SINGH AND ANOTHER (PLAINTIFFS) v. RAM  
SARUP AND OTHERS (DEFENDANTS)\*

*Agra Tenancy Act (Local Act III of 1926), sections 44, 230—  
Suit by landlord to eject a trespasser—Whether cognizable  
by civil court—Jurisdiction—Civil and revenue courts.*

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A suit by a landlord to eject a person alleged to be a trespasser is cognizable by the civil court. Although section 44 of the Agra Tenancy Act would also give a remedy with a limited amount of damages in the revenue court, still section 230 of that Act does not bar the jurisdiction of the civil court. The cognizability of the suit in the civil court is not affected by the fact as to whether the defendant pleads or does not plead that the relationship of landlord and tenant exists between the parties; section 273 of the Act will apply if such a plea is raised and issue will be remitted to the revenue court.

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

Mr. *Shiv Charan Lal*, for the opposite parties.

NIAMAT-ULLAH, J.:—This is an application for revision under section 115 of the Code of Civil Procedure by the plaintiffs, against an order passed by the learned District Judge, Mainpuri, upholding an order of a Munsif of that district returning the plaint for presentation to the revenue court, which, according to the Munsif, is the proper court to take cognizance of the suit. The plaintiffs applicants are some of the zamindars of the village in which the land in dispute lies. They took ejectment proceedings against a tenant and ejected him. Defendants 4 and 5, who are co-sharers of the plaintiffs, then granted a lease to defendants 1—3. The plaintiffs do not recognize these defendants as their tenants and seek to eject them as trespassers. The defendants, however, maintain that the lease granted by defendants 4 and 5 is valid, having been granted by them with the concurrence of the plaintiffs. A preliminary question was raised in the trial court as to whether the civil court has jurisdiction to entertain the suit. The trial court held that the suit was exclusively triable by the revenue court. Accordingly it returned the plaint to the plaintiffs for presentation to the revenue court. The plaintiffs appealed from that order to the District Judge, who took the same view. In the present revision it is contended that the civil court has jurisdiction and that the lower courts were wrong in holding to the contrary.

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The jurisdiction of the court is primarily determined by the allegations contained in the plaint. The plaintiffs have clearly alleged in the plaint that defendants 1—3 are trespassers. The plaint goes on to allege that defendants 1—3 claim to hold the land under a lease granted by defendants 4 and 5, which lease is invalid. The lower courts have held that the plaintiffs can take ejectment proceedings under section 44 of the Tenancy Act, and therefore the civil court has no jurisdiction. The lower courts have relied on *Dan Sahai v. Jai Ram Singh* (1) and *Duiji Kunwar v. Baila Kunwar* (2), and have distinguished the Full Bench case of *Muhammad Muslim v. Maharania* (3).

I may say at once that the case of *Duiji Kunwar v. Baila Kunwar* (2) is not in point. It was a suit by persons claiming to be the heirs of a tenant for establishment of their right. It was clearly not a case in which a zamindar sued for ejectment of the defendant treating him as a trespasser. In *Dan Sahai v. Jai Ram Singh* (1) certain observations occur which undoubtedly support the view taken by the lower court. On the facts of that case, however, it is perfectly clear that the civil court could have no jurisdiction. The suit was tried out, and it was definitely found that the plaintiff zamindar had not taken delivery of possession, though a decree for ejectment had been passed. Instead of executing the decree, the zamindar instituted a suit in the civil court on the strength of a formal delivery of possession given at the time when actual ejectment of the tenant was not permissible under the Tenancy Act. It was also found that the tenant continued in possession in spite of the so called delivery of possession. It is perfectly clear that the relationship of landlord and tenant was not put an end to by actual ejectment of the tenant. The decision in that case was put in the alternative. It was held that if the *dakhlanamah* did not operate as a break in the

(1) [1932] A.L.J., 517.

(2) [1932] A.L.J., 521.

(3) (1927) I.L.R., 50 All., 130.

tenancy of the defendant, he continued to be a tenant; and if it did, the defendant was a trespasser, against whom a suit under section 44 of the Tenancy Act was maintainable in the revenue court. In either view, it was said, the civil court had no jurisdiction. I was one of the Judges who decided that case but have no hesitation in saying that if our attention had been drawn to the case of *Muhammad Muslim v. Maharania* (1), the second alternative ground on which the decision was based would have been omitted.

I would have referred the present case to a Division Bench if *Dan Sahai v. Jai Ram Singh* (2) had been the only case of this Court in point. I, however, find that the Full Bench case, above referred to, is applicable and that I am bound to follow it in preference to the Division Bench ruling. The lower appellate court has sought to distinguish the Full Bench case on the ground that the defendant in that case had pleaded that he was a tenant of the plaintiff and that no such plea has been taken in the present case. This is no distinguishable feature, whatever. The Full Bench clearly held that section 44 was enacted in order to allow facility to an owner of an agricultural land in seeking a speedy remedy through the revenue court if the defendant had taken possession without his consent, and if the plaintiff is prepared to accept damages up to the maximum prescribed, and that it could not deprive the landlord of his right to eject the defendant through the civil court on the ground that he (the defendant) is a trespasser. It is true that if the defendant pleads that he is a tenant of the plaintiff, the civil court is bound to remit an issue to the revenue court for a decision of the question as to whether the relationship of landlord and tenant exists between the parties.

Besides the Full Bench ruling already discussed, there is another Division Bench ruling, *Raji v. Ram Lagan* (3), which follows the Full Bench case and lays down

(1) (1927) I.L.R., 50 All., 130.

(2) [1932] A.L.J., 517.

(3) [1930] A.L.J., 637.

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that the suit by a landlord against a trespasser lies in the civil court, and although section 44 of Act III of 1926 would also give a remedy with a limited amount of damages in the revenue court, still section 230 of that Act does not bar the jurisdiction of the civil court. In this state of the authorities I have no difficulty in holding that the alternative ground on which the decision in *Dan Sahai v. Jai Ram Singh* (1) is based is not correct, and being opposed to the Full Bench ruling of this Court cannot be treated as good law. Accordingly I allow this revision, set aside the orders of the lower courts and remand the case to the court of first instance with the direction that the suit be restored to its original number and disposed of according to law. Costs hitherto incurred shall abide the result.

### FULL BENCH

*Before Sir Shah Muhammad Sulaiman, Chief Justice,  
 Mr. Justice Thom and Mr. Justice Rachhpal Singh*

1937  
 January, 20

MUHAMMAD HASAN (PLAINTIFF) v. GAJADHAR PRASAD  
 AND OTHERS (DEFENDANTS)\*

*U. P. Electoral Rules (1926), rule 8(2); schedule II, paragraphs 2, 11 proviso—Elector—Landholder—Land held "in his own personal right"—Agra Landholders' constituency—Member of joint Hindu family, whether an elector—Court of Wards Act (Local Act IV of 1912), section 4(1) proviso—Membership of Court of Wards—Eligibility—Payment of land revenue—Member of joint Hindu family paying joint land revenue—Reference to Full Bench—Question of law arising in a case—Whether whole case must be referred—Rules of High Court, chapter I, rule 3A.*

The defendant was a member of a joint Hindu family which owned land in respect of which land revenue of over Rs.5,000 was paid. He was a member of the Agra Province Zamindars' Association, the membership of which required, by rule 5 of the Association, the same qualification as was laid down by

\*First Appeal No. 217 of 1935, from a decree of Brij Behari Lal, Civil Judge of Allahabad, dated the 1st of March, 1934.

(1) [1932] A.L.J., 517.