

## MISCELLANEOUS CIVIL

Before Mr. Justice Niamat-ullah and Mr. Justice  
Rachhpal Singh

KAMLA PRASAD (PLAINTIFF) v. RAM PRASAD (DEFENDANT)\*

1933  
September, 13

*Provincial Small Cause Courts Act (IX of 1887), schedule II, article 8—“House rent”—Khattis—Grain-pits situate inside dwelling house, but leased apart from the house—Suit for rent whether cognizable by small cause court.*

*Khattis*, or grain-pits, whether situate within the limits of residential houses or otherwise, are meant for storage of grain, and, when let apart from the houses in which they are situate, can not be considered to be houses, i.e. places meant for human habitation. A suit for rent of the *khatti* in such cases is not a suit for the recovery of house rent and is not, under article (8) of the second schedule to the Provincial Small Cause Courts Act, cognizable by a court of small causes.

Mr. *Shah Jamil Alam*, for the plaintiff.

Mr. *K. N. Gupta*, for the defendant.

NIAMAT-ULLAH and RACHHPAL SINGH, JJ.:—We are indebted to Mr. *Shah Jamil Alam* and Mr. *K. N. Gupta*, who appeared *amicus curiae* for the plaintiff and the defendant, respectively, in this reference, which was otherwise unrepresented.

The reference has been made under order XLVI, rule 1 of the Civil Procedure Code by the learned Judge of the small cause court at Banda. It arose out of a suit for rent in respect of certain *khattis* or grain-pits situate inside certain houses. The owner of the *khattis* is in the habit of leasing them on rent. The lessee has the right to use them for the purpose of storing grain, and has no other right of enjoyment in the houses in which the *khattis* are situate. On objection being taken by the defendant to the jurisdiction of the court, the present reference has been made.

The determination of the question depends upon the right interpretation of the language of article (8) of schedule II to the Provincial Small Cause Courts Act, which excludes the jurisdiction of the court of

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small causes, *inter alia*, as regards "a suit for the recovery of rent, other than house rent, unless the Judge of the court of small causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto." No authority, such as is contemplated by the latter part of the above article, has been conferred upon the learned Judge of the court below. The sole question is whether this is a suit for recovery of rent of a house. If it is, the jurisdiction of the court of small causes is not barred; if it is not, the suit is cognizable exclusively by a regular civil court.

The learned advocate appearing for the plaintiff has contended before us that the *khattis* are integral parts of the houses in which they are situate and must, therefore, be considered to be parts of dwelling houses. According to him, the plaintiff has let to the defendant parts of dwelling houses, though those particular parts may not be actually used for human habitation. The learned advocate for the defendant, on the other hand, contends that the word "house" has a well ascertained meaning, implying a place fit for human habitation. He refers to the meaning of "house" as given in Murray's Dictionary, in which a house is defined in the above sense. He has also referred to a number of cases, none of which is, however, on all fours with the case before us.

In our opinion the circumstance that the *khattis* happen to be situate within the ambit of residential houses will not alter the character of the *khattis* themselves. *Khattis*, whether situate within the limits of the residential house or otherwise, are meant for storage of grain, and, when let apart from the houses in which they are situate, cannot be considered to be places meant for human habitation. In this view, the suit is not one for recovery of rent of a house. It is, therefore, not cognizable by a court of small causes. The reference is answered accordingly.