

MISCELLANEOUS CIVIL

1937
November,
25

Before Mr. Justice Niamat-ullah and Mr. Justice Ismail

DATA RAM AND ANOTHER (PLAINTIFFS) v. DHARA AND
ANOTHER (DEFENDANTS)*

*Agra Tenancy Act (Local Act III of 1926), sections 121, 230—
Suit by one co-tenant against another for share of profits—
Cognizable by civil court—Jurisdiction—Civil and revenue
courts.*

A suit for the plaintiffs' share of the profits of an agricultural holding, on the allegation that the plaintiffs were co-tenants with the defendants in that holding although it was exclusively in the cultivation of the defendants, is cognizable by the civil court and not by the revenue court.

Section 121 of the Agra Tenancy Act did not apply to the suit, as the plaintiffs did not claim the formal relief of a declaration of their rights as tenants, and the issue raised by the defendants regarding the tenancy was only incidentally involved in the suit. The suit as framed was not of a nature specified in the fourth schedule to the Act, nor did the revenue court have jurisdiction to grant adequate relief to the plaintiffs; section 230, therefore, did not bar the jurisdiction of the civil court.

The jurisdiction of the court is to be initially determined by the allegations made in the plaint and cannot be ousted by the mere allegations and denials made in the written statement.

It would be open to the party aggrieved by the civil court decision in this case to institute in the revenue court a declaratory suit under section 121 of the Agra Tenancy Act.

The parties were not represented.

NIAMAT-ULLAH and ISMAIL, JJ.:—The facts that have given rise to this reference may be shortly stated. The plaintiffs came to the court of the Judge, Small Causes, on the allegation that they were co-tenants with the defendants of certain land which was exclusively in the cultivation of the defendants. The plaintiffs claimed profits in proportion to their share in the holding. The defendants contested the suit and alleged that the plaintiffs were not the tenants of the holding and that the civil court had no jurisdiction to try the suit. On the pleas

raised by the defendants the following issues were framed by the court:

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1. Whether the plaintiffs are co-tenants of the land in dispute with the defendants?

2. Has the court jurisdiction to try the case?

The lower court felt itself bound by the ruling of a learned single Judge of this Court in *Ram Kali v. Kamta Prasad* (1) but foresaw some difficulties in adopting the procedure indicated in that ruling. It has, therefore, referred the following question to this Court for decision: "Whether the plaint should in this case be returned for presentation to the proper court or whether the suit be stayed and one of the parties be directed to obtain the declaration of his rights from the revenue court?"

Before answering the questions involved in the reference we propose to deal with the issue of jurisdiction that has been raised by the defendants. It cannot be disputed that ordinarily the civil court has jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred (section 9 of the Civil Procedure Code). It seems to be suggested that the decision of the first issue, if it is in favour of the plaintiff, will involve a declaration that the plaintiff is a tenant of the landlord through whom the defendant claims and that therefore the suit is of the nature contemplated by section 121 of the Agra Tenancy Act. It is argued on the authority of the ruling quoted above that the jurisdiction of the civil court is barred by the provisions of the Agra Tenancy Act. To give effect to this contention will lead to great anomalies. The plaint as it stands discloses a suit cognizable by a civil court. It cannot be returned for presentation to the revenue court. The only other course left is to dismiss the suit which will mean that the defendant can, by merely denying the right of the plaintiff in such a suit,

(1) A.I.R. 1934 All. 404.

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have his suit dismissed without a trial. Obviously the procedure laid down in section 273 of the Act cannot be applied as the defendants in this case do not plead that they hold the land in dispute as the tenants of the plaintiffs or of a person in possession of the holding from the plaintiffs.

We think section 121 of the Act has no application because the plaintiffs do not claim the formal relief of a declaration of their rights as tenants, so that if the suit succeeds the relief may be embodied in the decree. The only relief claimed by them is the recovery of profits and since the defendants deny their right it is incidentally involved in the suit. The bar provided by section 230 of the Act will be effective only if the suit is of the nature specified in the fourth schedule to the Act. A suit for profits by a tenant against his co-tenant is not so specified. Therefore, it is clear that on the allegations in the plaint the suit is exclusively cognizable by the civil court. This view has repeatedly found favour with this Court: see *Jumna Das v. Misri Lal* (1) and *Qudsia Jan v. Zahid Husain* (2).

In *Ram Kali v. Kamta Prasad* (3) the civil court was directed to return the plaint to the plaintiff for presentation to the revenue court. With great respect we find ourselves unable to endorse this course. The plaint should be returned by a court if it is found that the suit is not within its territorial or pecuniary jurisdiction. In many other cases it may be the duty of the court to dismiss the suit if it finds that it is not cognizable by the class of court to which that court belongs. In the present case the suit as framed cannot be entertained by the revenue court at all. We have given our reasons for holding that the proper forum for a suit for recovery of profits by a tenant against a co-tenant is the civil court. The revenue court will not be justified in taking cognizance of this suit, having regard to the allegations in the

(1) (1934) I.L.R. 57 All. 852.

(2) (1935) I.L.R. 57 All. 854.

(3) A.I.R. 1934 All. 404.

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plaint. The result will be that the plaintiffs will be denied a redress in either the civil or the revenue court. This may be inevitable in certain cases where the plaintiff does not frame his suit in the manner prescribed by law. But we can find no fault with the frame of the suit in the present case. The plaintiffs could not be expected to foresee the defence that was set up by the defendants. We, however, see no justification for holding that the cognizance of the present suit is barred by any of the provisions of the Tenancy Act. As already said, the issue relating to the tenancy raised by the defendants is only incidental to the main relief. If the court ultimately finds that the plaintiffs are not the tenants the suit will have to be dismissed. On the other hand if the plaintiffs succeed in establishing their title to the tenancy they will be entitled to a decree for profits which they claim. In *Ananti v. Chhannu* (1) the learned Judges had to consider the following question: "Where a plaintiff, alleging himself to be a tenant, sues a defendant, treating him as a trespasser, for possession and compensation regarding a holding or a part thereof, and the defendant pleads tenancy, then, having regard to sections 99 and 230 of Act III of 1926, is the suit maintainable in the civil court?" The majority of the learned Judges answered the above question in the affirmative.

In discussing this question the learned Judges made the following observation at page 513: "We are of opinion that the jurisdiction of the court is to be initially determined by the allegations made in the plaint, and the allegations made in the written statement cannot oust that jurisdiction unless and until the allegations of fact have been gone into, tried judicially and found to be true, and the plaintiff's allegations have been found to be false." In our judgment this observation materially supports the view we have taken in this case.

In another case a Division Bench of this Court, dealing with a case where the plaintiffs alleged and proved that

(1) (1929) I.L.R. 52 All. 501.

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they were members of a joint Hindu family with the defendants and were as such entitled to a declaration of their right to zamindari properties and the tenancy holdings owned by the family, held that the suit was maintainable in the civil court as it was based on a cause of action with respect to which adequate reliefs could not be granted by the revenue court: see *Sukhdeo v. Basdeo* (1). Similarly in the present case the revenue court has no jurisdiction to grant adequate relief to the plaintiffs, and therefore the whole suit can be legally tried by the civil court alone and the suit as framed is maintainable in that court. The decision of the civil court on the first issue being incidental and the revenue court having a conclusive jurisdiction to grant a declaration of right, it will be open to the party aggrieved by the civil court decision to institute in the revenue court a declaratory suit under section 121 of the Agra Tenancy Act. We therefore answer both parts of the question put to us in the negative.

APPELLATE CIVIL

*Before Mr. Justice Bennet, Acting Chief Justice, and
 Mr. Justice Verma*

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DURGPAL SINGH (JUDGMENT-DEBTOR) v. GULZARI LAL
 AND ANOTHER (DECREE-HOLDERS)*

Civil Procedure Code, order XXXIV, rule 14—Applicable only where mortgage subsists—Applicability to personal decree under order XXXIV, rule 6—Mortgagee electing to exempt one item of property from the mortgage suit—Sale proceeds of the other items insufficient—Whether the subsequent personal decree can be executed against the exempted item.

In a suit for sale upon a mortgage comprising five items of property the mortgagee exempted one item and asked for a decree as against the other four items only. A decree was passed accordingly and these four items were sold, but the sale proceeds were insufficient to satisfy the decree and the plaintiff then obtained a personal decree under order XXXIV, rule 6 of the

*First Appeal No. 476 of 1935, from a decree of M. M. Seth, Civil Judge of Budaun, dated the 3rd of August, 1935.

(1) (1935) I.L.R. 57 All. 949