

the contents could be entertained or given effect to by the executing Court. Objections to the decree of the lower Court which has become that of the last appellate Court could be attended to by the latter Court alone. We should therefore say that the decree of the Court of last instance is the only decree susceptible of execution, and that the specifications of the decrees of the lower Court or Courts as such may not be referred to and applied by the Court executing the decree.

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## APPELLATE CIVIL

1882  
April 3.

Before Mr. Justice Straight and Mr. Justice Oldfield.

LACHMI NARAIN (PLAINTIFF) v. BHAWANI DIN (DEFENDANT).\*

*Act XII of 1881 (N.-W. P. Rent Act), ss. 206, 207—Suit instituted in Revenue Court partly cognizable in Civil Court.*

A co-sharer sued in a Court of Revenue (i) for his share of the profits of a mahal and (ii) for money payable to him for money paid for the defendants on account of Government revenue. An objection was taken in the Court of first instance that the suit, as regards the second claim, was not cognizable in a Court of Revenue. The lower appellate Court allowed the objection, and dismissed the suit as regards such claim on the ground that the Court of first instance had no jurisdiction to try it. *Held* that, the objection being in effect "an objection that the suit was instituted in the wrong Court," within the meaning of ss. 206 and 207 of Act XII of 1881, the defect of jurisdiction was cured by those sections, and the procedure prescribed in s. 207 should have been followed.

THIS was a suit, instituted in the Court of an Assistant Collector of the first class, in which the plaintiff claimed (i) Rs. 218-14-9, being his share of the profits of a certain mahal for 1285 fasli, and (ii) Rs. 252-3-0, being the amount of Government revenue he had paid for the defendants under s. 146 of Act XIX of 1873. The parties were co-sharers in the mahal in question, the defendant Bhawani Din being also the lambardar. The defendant Bhawani Din set up as a defence to the suit, *inter alia*, that the second claim was not cognizable in a Revenue Court, being a claim for money paid for him. The Assistant Collector held that he could take cognizance of such claim; and gave the plaintiff a decree against Bhawani Din for the amount, and for Rs. 17-11-7 profits. On appeal by the defendant the District Court reversed the decree of

\* Second Appeal, No. 609 of 1881, from a decree of R. J. Leeds, Esq., Judge of Banda, dated the 21st March, 1881, modifying a decree of Pandit Kanahia Lal, Assistant Collector of the first class, Hamirpur, dated the 19th January, 1881.

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the Assistant Collector, in so far as such claim was concerned, holding, with reference to the case of *Ram Dial v. Gulab Singh* (1), that such claim was not cognizable in the Revenue Courts.

The plaintiff appealed to the High Court, contending that, having regard to the provisions of ss. 206 and 207 of Act XVIII of 1873, the District Court should not have disallowed the second claim.

The *Senior Government Pleader* (Lala Juala Prasad), and *Munshi Hanuman Prasad*, for the appellant.

Mr. Conlan, Pandit *Ajudhia Nath*, and *Munshi Sukh Ram*, for the respondent.

The Court (STRAIGHT, J. and OLDFIELD, J.) made the following order remanding the case to the lower appellate Court for the trial of the issue set out in the order:—

OLDFIELD, J.—This was a suit brought in the Revenue Court for recovery of money due as profits, and for money paid by plaintiff on account of revenue due by defendant. It was objected in the Court of first instance that the second part of the claim was not cognizable in the Revenue Court. The Judge in appeal allowed the objection and disallowed this part of the claim on the ground of want of jurisdiction of the Court of first instance to try it.

We are of opinion that the defect of jurisdiction is cured by ss. 206 and 207 of the Rent Act. No doubt in this instance the objection was to a part of the claim in the suit, or in other words it was an objection that the suit in respect of a portion of its subject-matter was instituted in the wrong Court, but we consider that is in effect “an objection that the suit was instituted in the wrong Court” within the meaning of the sections. It is clear that, had the claim for money paid in respect of revenue on account of defendant formed the only subject-matter of the suit, the defect of jurisdiction would be cured by ss. 206 and 207, and it would be anomalous to hold that, by joining this claim with one in respect of which the Revenue Court had jurisdiction, the defect would not be cured, owing to the sections in question not being applicable. The Judge must try the issue in respect of the plaintiff's claim for this item, and we remand the case accordingly and allow ten days for objections being preferred to the finding.

*Issue remitted.*