

appealable under s. 588.—*Nand Ram v. Muhammad Bakhsh* (1). Under these circumstances it is obvious that the present special appeal to this Court will not lie, and it must therefore be dismissed with costs.

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v.
NAUBAT R

Appeal dismissed.

Before Mr. Justice Pearson and Mr. Justice Oldfield

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SUKHDAIK MISR AND OTHERS (PLAINTIFFS) v. KARIM CHAUDHRI AND ANOTHER (DEFENDANTS)*

Determination of title by Revenue Court—Res judicata—Act XVIII of 1873 (N.-W.P. Rent Act), ss. 36, 39—Act X of 1877 (Civil Procedure Code), s. 13—Jurisdiction of Civil Court.

S caused a notice of ejectment to be served upon K in respect of certain land, alleging that he held the same by virtue of a lease which had expired. K contested his liability to be ejected under s. 39, denying that he held the land by virtue of such lease and alleging that he held it under a right of occupancy. The Revenue Court decided that K held the land under a right of occupancy and not under such lease. S thereupon sued K in the Civil Court, claiming possession of such land, on the allegation that K was a trespasser wrongfully retaining possession thereof after the expiration of his lease. Held that the suit was cognizable in the Civil Courts, and the decision of the Revenue Court did not render the matter in issue *res judicata*. The provisions of s. 13 of Act X of 1877 do not apply to applications such as those under s. 39 of Act XVIII of 1873.

THE plaintiffs in this suit claimed possession of certain land. They alleged that the defendant acquired such land under a lease of a two-anna eight-pie share of the village in which such land was situate, and that as such lease had expired the defendant was holding such land as a trespasser. The defendant set up as a defence to the suit that he had not acquired such land under the lease, but was holding it under a right of occupancy; and that it had already been decided by the Revenue Court as between him and the plaintiffs that he was so holding it, and such decision was a bar to a fresh adjudication as to the title under which he was holding it. It appeared that the plaintiffs had caused a notice of ejectment to be served upon the defendant in respect of such land under the provisions of ss. 36 and 37 of Act XVIII of 1873, alleging that he held it under such lease and the same had expired. The defendant had contested his

* Second Appeal, No. 813 of 1836, from a decree of Hakim Rohat Ali, Subordinate Judge of Gorakhpur, dated the 10th May, 1830, affirming a decree of Munivi Nisar Ali, Munsif of Bansi, dated the 13th December, 1829.

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liability to be ejected, under the provisions of s. 39, claiming to hold such land under a right of occupancy. The Revenue Courts decided in the proceedings which then followed that the defendant had not acquired such land under such lease, but held it under a right of occupancy. Both the lower Courts held in this present case that they were not competent to determine the defendant's status as regards such land, and that the decision by the Revenue Court was a bar to a fresh determination of his status as regards the same; the lower appellate Court finding, however, upon the evidence, that the defendant held such land under such lease and not under a right of occupancy.

On second appeal the plaintiffs contended that the Civil Courts were competent to entertain the suit, and that the former decision of the Revenue Court as to the defendant's title was not a bar to its determination by the Civil Courts.

Munshi *Kashi Prasad*, for the appellants.

Munshi *Hanuman Prasad* and Maulvi *Mehdi Hasan*, for the respondents.

The judgment of the Court (PEARSON, J., and OLDFIELD, J.,) was delivered by

PEARSON, J.—There can be no doubt that the suit out of which the present appeal has arisen is one properly cognizable by the Civil Courts. The plaintiffs seek to oust the defendant as a trespasser who has wrongfully retained possession of land which he ought to have surrendered on the expiration of the term of his lease. The suit being one of a nature clearly and exclusively cognizable by the Civil Courts, the only remaining point for consideration is whether they are debarred from adjudicating it by the decision of the revenue authorities on the application preferred to them by the defendant under s. 39 of the Rent Act. The issue decided by them was whether the defendant had entered upon the holding as a tenant or in virtue of his possession as a lessee; and they decided that his status was that of a tenant. That was an issue which, if they were competent to decide incidentally for the purpose of disposing of the application made to them, they were certainly not competent to decide finally so as to preclude a re-adjudication

of it by the Civil Courts. By this decision the matter in issue did not become a *res judicata*. Nor indeed do the provisions of s. 13, Act X of 1877, apply to applications such as those under s. 39 of the Rent Act. The lower appellate Court has found as a matter of fact upon the evidence that the land in suit has been cultivated by the defendant in virtue not of a tenant-right, but of his position as a lessee, and is wrongfully retained by him after the expiry of the term of his lease. Upon that finding the plaintiffs were entitled to a decree; and we accordingly decree the claim and appeal with costs by reversal of the decrees of the lower Courts.

Appeal allowed.

Before Mr. Justice Pearson and Mr. Justice Oulfield.

KHUSHIALO (DEFENDANT) *v.* BEHARI LAL AND ANOTHER (PLAINTIFFS).*

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Acknowledgment of debt contained in unregistered document—Admissibility of document as evidence of acknowledgment—Act XV of 1877 (Limitation Act), s. 19 and sch. ii, Nos. 57, 85.

The nature of the pecuniary transactions between *B* and *G* were such that sometimes a balance was due to the one and sometimes to the other. On the 1st October, 1875, there was a balance due to *B*. During the ensuing year, as computed in the account, *G* made payments to *B* exceeding such balance. On the 19th November, 1876, a balance of Rs. 3,500 was found to be due from *G* to *B*. On the 11th December, 1876, *G* executed a conveyance of certain land to *B*, for which such debt was partly the consideration. In such conveyance *G* acknowledged his liability in respect of such debt. He died before such conveyance was registered and it did not operate. On the 18th November, 1879, *B* sued *G*'s widow for such debt. *Held* that such conveyance was admissible as evidence of the acknowledgment by *G* of his liability for such debt, notwithstanding such conveyance was not registered; that, applying No. 85, sch. ii of Act XV of 1877, such debt was not barred by limitation when such acknowledgment was made; and that, if that article was not applicable, but the period of limitation began to run from the time each item composing such debt became a debt, still such debt would not have been barred when such acknowledgment was made, as the debt with which the year computed from the 1st October, 1875, opened was extinguished by payments made by *G* in the course of that year.

THE plaintiffs, who were by occupation money-lenders, stated in their plaint that Gulzari Lal, the deceased husband of the defendant, had had pecuniary dealings with them for a long time; that on the 19th November, 1876, the accounts between them and Gulzari Lal were stated and a balance was found due to them of,

* First Appeal, No. 38 of 1880, from a decree of Munsif Abdul Qayum Khan, Subordinate Judge, of Bareilly, dated the 30th January, 1880.