

wound up, &c. In our opinion that section is, as we in a former judgment stated, of an enabling kind, and allows the members of a partnership that has ceased to exist to invoke the machinery of the Court of the District Judge to wind up their business for them, instead of doing it themselves. We certainly cannot read it as precluding a suit such as the one before us in appeal, nor can we understand why any such prohibition as that contended for should exist. On the contrary, with the number of small partnerships that exist among persons in this country, much inconvenience and unnecessary expense would be caused were partners in all cases compelled to resort for dissolution of partnership or winding up the affairs of their firms to the District Judge's Court. We think therefore that the plaintiff's suit as brought was properly preferred in the Court of the Munsif, and rightly entertained by him. Hence it was competent for him to make the reference to arbitration, and his judgment and decree in accordance with the award of the arbitrators were legal and proper, and should be upheld. We may add that it is satisfactory to be able to take this view, as it would have been little short of a scandal that the plaintiff, himself having instituted the suit and consented to the arbitration, should be allowed to succeed upon an objection to the jurisdiction to which he had himself resorted for relief. The appeal is decreed with costs, and the decision of the Judge being reversed, the decree of the Munsif will be restored.

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KALIAN DAS
v.
GANGA
SARAI.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

MADHO PRASAD (DEFENDANT) v. AMBAR (PLAINTIFF). *

1883
April 2.

Landholder and tenant—Suit for rent where the right to receive it is disputed—Act XII of 1881 (N.-W. P. Rent Act), s. 148—Third person.

In a suit for rent between a landholder and a tenant under N.-W. P. Rent Act, 1881, where the right to receive rent is disputed, any rights which the landholder may have against the third person, who has been made a party to the suit, under s. 148 of the Act, can only be enforced through the medium of the Civil Court by a suit for declaration of title and for recovery of any rent improperly collected by such person.

* Second Appeal No. 1193 of 1882, from a decree of J. M. C. Steinbelt, Esq., Judge of Banda, dated the 24th July, 1882, modifying a decree of Munsifi Janki Prasad, Assistant Collector of the first class, Banda, dated the 22nd July, 1881.

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Held, therefore, where in such a suit it was found that the third person had actually and in good faith received the rent sued for, the claim should not have been decreed against him but should have been dismissed.

This was a suit instituted in the Court of the Assistant Collector of Banda for recovery of Rs. 137-1-9 principal and interest, arrears of rent for 1288 fasli, under clause (a), s. 93, Act XII of 1881, (N.-W. P. Rent Act). The plaintiff, Ambar, a co-sharer of a village, sued the defendants as heirs of a deceased tenant named Maghu. Upon hearing their defence, which was that Maghu had paid Rs. 125 out of the sum claimed as rent for 1288 fasli to Madho Prasad, another co-sharer of the village, the Court ordered Madho Prasad to be made a defendant under s. 148 of the Rent Act. The defendant Madho Prasad admitted having received Rs. 125 from Maghu in 1288 fasli. The Court of first instance dismissed the suit. The plaintiff Ambar appealed to the District Court. The District Judge found that the defendant Madho Prasad had received the Rs. 125 and in good faith, and dismissed the plaintiff's appeal. In appeal to the High Court it was urged that all the persons concerned being parties in the suit, the District Court ought to have determined the case on its merits and decided who among the defendants was liable to the plaintiff's claim. This contention prevailed, and the case was remanded to the District Court under s. 562 of the Civil Procedure Code. Upon the rehearing of the case by the District Court the plaintiff obtained a decree for Rs. 125 against the defendant Madho Prasad. From this decree Madho Prasad appealed to the High Court on the following grounds:—(1) The decree of the lower appellate Court was not warranted by the provisions of s. 148 of the Rent Act: (2) The *bonâ fide* receipt by the appellant of rent not being disputed, no decree should have been passed against him in the present suit.

Babu *Ram Das Chakarbatî* and *Munshi Ram Prasad*, for the appellant.

Munshi Hanuman Prasad, for the respondent.

The Court (STRAIGHT, J., and BRODHURST, J.) delivered the following judgment:—

STRAIGHT, J.—The pleas in appeal have force and must prevail. No doubt by s. 148 of the Rent Act in suits between landholders and

tenants, in which the right to receive rent is disputed on the ground that it has been *bonâ fide* paid to a third person, such third person may be brought on to the record as a party. This, however, is only for the purpose of determining, between the landlord and the tenant, the question as to whether the latter made the payment to such person as one who had actually and in good faith received rent from him before and up to the time when the right to sue accrued. The provisions of s. 148 were obviously made for the protection of the tenant, who, upon establishing a payment to a third person, under the circumstances mentioned therein, must be held to have satisfactorily answered the landholder's claim. Any rights the latter may have against the third person can necessarily only be enforced through the medium of the Civil Court, by a suit for declaration of title and recovery of any rents improperly collected by him.

In the present case it is found as a fact that Madho Prasad, the appellant, received the Rs. 125 *bonâ fide* under circumstances fulfilling the requirements of s. 148 of the Rent Act. The Judge, being of that opinion, should have dismissed the plaintiff-respondent's claim to that extent, but instead of doing so he has decreed it against the appellant. Such portion of his decree cannot stand, and allowing the appeal with proportionate costs, we direct that the decree be modified by striking out such portion of it as declares any liability on the part of Madho Prasad.

Appeal allowed.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Brodhurst.

NASIR HUSAIN (PLAINTIFF) v. SUGHRA BEGAM AND OTHERS
(DEFENDANTS).*

*Muhammadan Law—Gift—Transfer of absolute estate—Condition—
Sunni Law—Shia Law.*

The owner of a house made a gift thereof to certain persons "for their residence, and that of their heirs, generation after generation," declaring that if the donees sold or mortgaged the house, he and his heirs should have a "claim" to the house, but not otherwise. *Held* that under Muhammadan Law, whether that by which the Shias, or that by which the Sunnis, were governed, the house passed by the gift to the donees absolutely, the declaration by the donor as to the effect of an alienation by the donees being in the nature of a recommendation, and not having the effect of limiting the estate in the house itself.

* First Appeal No. 125 of 1881, from a decree of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 5th August, 1881.

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