

application which had been postponed; and we think a distinction may certainly be drawn between an application of this nature and one of the nature of a fresh application for the execution of the decree, and that art. 178 will apply and the limitation will run from the time when the right to apply accrues—in this case from the date when the record was returned to the Munsif's Court, on disposal of the proceedings in the appellate Court. The order of the Munsif, dated 27th May, 1878, was in fact an order for postponement; and whether or not it was a proper order to make, under the circumstances it gave a right to the decree-holder to make the application which he has now made.

Our attention has been drawn to a case decided by the Bombay High Court—*Kalyanbhai Dipchand v. Ghanashamlal Jadurathji* (1)—which is similar to the one before us, and decided on analogous grounds, and the principle of our decision has already been recognised by this Court in the case of *Paras Ram v. Gardner* (2). We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Tyrrell.

RADHA PRASAD SINGH (DEFENDANT) v. SALIK RAI (PLAINTIFF).*

Landholder and tenant—Ejection of tenant—Suit by tenant for declaration of right—Jurisdiction—Res judicata—Act XVIII of 1873 (N.-W. P. Rent Act), s. 93 (b)—Civil Procedure Code, s. 13.

An occupancy-tenant, who had been ejected, under ss. 34 and 93 (b) of the North-Western Provinces Rent Act, on the ground that he had committed an act mentioned in those sections, which rendered him liable to ejection, sued in the Civil Court for a declaration of his right of occupancy and to have the decree of the Revenue Court directing his ejection declared of no effect, on the ground that his act was not one of those rendering him liable to ejection, being author by local custom.

Held that the question of the plaintiff's liability to ejection on account of the act in question, being a matter the cognizance of which was limited to the Revenue Courts, and the decision of the Revenue Court against him having become final, the plaintiff's suit was barred by s. 13 of the Civil Procedure Code. *Raj Bahadur v. Birnha Singh* (5) distinguished.

* Second Appeal No. 584 of 1882, from a decree of J. W. Power, Esq., Judge of Ghazipur, dated the 13th March, 1882, affirming a decree of Maulvi Mahmud Baksh, Subordinate Judge of Ghazipur, dated the 10th November, 1881.

(1) I. L. R., 5 Bom., 29. (2) I. L. R., 1 All., 255.
(3) I. L. R. 3 All. 85.

1882

RAGHUBANS
GIR
v.
SHROSARAN
GIR.

1883.

January 3.

1883

RADHA PRA-
SAD SINGH
v.
SALIK RAI.

THE plaintiff in this case was an occupancy-tenant of 15 bighas 17 biswas of land situate in pargana Doaba, zila Balia, which lies between the two rivers Gogra and Ganges, and which is annually affected by the rising of the waters of those rivers. In 1879 the waters rose and swept away the plaintiff's house, and he thereupon built himself on the land in question a temporary hut consisting of a "chhappar" (thatched roof) and wattled sides. The defendant in this suit, the zamindar, on this account sued him in the Revenue Court, under ss 34 and 93(b) of the North-Western Provinces' Rent Act, 1873, claiming his ejection on the ground that his act was detrimental to the land. On the 29th July, 1880, the Assistant Collector trying this suit gave the zamindar a decree for the tenant's ejection. The plaintiff thereupon brought the present suit against the defendant for a declaration of his cultivatory right in respect of the land, and to have the decree of the Assistant Collector declared of no effect, on the ground that the plaintiff's act was not detrimental to the land, and there was a custom prevailing in the pargana in which it was situated, which entitled an occupancy-tenant when driven from his home by the action of the two rivers to build himself a temporary hut on his land. The suit was instituted in the Court of the Subordinate Judge of Ghazipur. The principal defence to the suit was that it was not cognizable in the Civil Courts, regard being had to the provisions of s. 93 of the North-Western Provinces Rent Act, 1873. The Subordinate Judge held that the suit was cognizable in the Civil Courts, since the question at issue was whether a tenant was according to village-custom entitled to build a temporary hut on his cultivatory land or not, and further that such question was not *res judicata*, with reference to the Assistant Collector's decision, as it had not been raised before him. In support of his decision on the question of jurisdiction the Subordinate Judge referred to *Raj Bahadur v. Birmha Singh* (1). On appeal the District Judge of Ghazipur affirmed the decision of the Subordinate Judge with reference to the same case, observing that in his opinion the Assistant Collector had exceeded his power or at all events strained the law, and the Civil Courts were not bound by his decision.

(1) I. L. R. 3 All. 85.

In second appeal it was again contended on the defendant's behalf that the Civil Courts were debarred from taking cognizance of the suit by s. 93 of the North-Western Provinces Rent Act, 1873.

Mr. *Conlan* and *Lala Lalta Prasad*, for the appellant.

Mr. *Howard*, for the respondent.

The Court (OLDFIELD, J. and TYRRELL, J.) delivered the following judgment :

TYRRELL, J.—This is a suit for a decree designed to “recognize the plaintiff's right of cultivation in respect of 15 bighas and 17 biswas of land, and to cancel the decision of the Revenue Court made on the 29th July, 1880,” whereby the plaintiff was ejected from the land in question under the provisions of s. 34 and of s. 93 (b) of the North-Western Provinces Rent Act. The question at issue, and determined in that suit by a competent Revenue Court, was in respect of the competence of a tenant, the respondent before us, to erect or permit the erection of houses for human habitation on the area of his cultivatory holding by virtue of an alleged local custom in Ghazipur on the subject. This matter was decided against the tenant, who seeks now to obtain relief against the order of the Revenue Court by this civil action. He succeeded in both the Courts below, the District Judge holding, on the authority of this Court's Full Bench ruling in *Raj Bahadur v. Birmha Singh* (1), that the respondent's suit was cognizable by the Civil Court. This decision is questioned in the present appeal, which must be allowed.

It is provided by the mandatory terms of s. 93 of the Rent (North-Western Provinces) Act, that “except in the way of appeal as hereinafter provided, no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which any suit of the nature mentioned in this section might be brought, and such suits shall be heard and determined in the said Courts of Revenue in the manner provided in this Act, and not otherwise.” Now the question at issue between the appellant and respondent in the suit in the Revenue Court was actually brought to trial, and it formed the direct subject-matter of the class of suits covered

(1) L. L. R., 3 All. 85.

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by cl. (b) of s. 93, *supra* : and the cognizance of such a "dispute or matter" is definitively limited to the Revenue Courts. The decision of the Revenue Court against the respondent became final ; and by the rule of s. 13 of the Civil Procedure Code the present action is barred. The present suit is not one in which the question arises as to which of two alternative Courts, one admittedly having jurisdiction, should entertain the case. The point is whether such a suit is maintainable in any Court. The Full Bench ruling mentioned above has no application to this case. It was there held that a dispute regarding a landlord's power to demolish a tenant's well is cognizable by a Civil Court ; and that a decision by a Revenue Court to the effect that compensation should be given to a tenant ejected for building a well is not a determination of the landholder's right to demolish the well as having been constructed by a person not entitled to do so, and is consequently not a bar to a suit by the landholder in the Civil Court for the demolition of the well on this ground. The distinction between that case and the circumstances of the litigation with which we have to deal [in this appeal is obvious. We must set aside the decrees of the Courts below, and decree this appeal with costs.

Appeal allowed.

Before Mr. Justice Straight and Mr. Justice Oldfield.

AMAR NATH, GUARDIAN OF LACHMI NARAIN, MINOR (PLAINTIFF), v.
THAKUR DAS AND OTHERS (DEFENDANTS).*

Guardian and minor—Security-bond—Suit on minor's behalf against guardian's sureties—Assignment of security-bond—Act XL of 1858—Act IX of 1861—Act X of 1865, s. 257.

B, having been granted by a District Court a certificate under Act XL of 1858 in respect of the estate of a minor, the Judge of such Court called on her to furnish security, and certain persons accordingly gave security-bonds to the Judge on her behalf. Subsequently *B*'s certificate was taken from her, and was granted to *A*, who brought a suit on the minor's behalf against *B*'s sureties for the value of the property intrusted to *B*. The security-bonds in question were not assigned by the Judge to *A*.

Held that, inasmuch as the plaintiff was seeking to enforce contracts which were never made with him or any other person in the character of legal representative of the minor, he had no legal *status* to maintain the suit.

* First Appeal No. 51 of 1881, from a decree of Maulvi Maqsd Ali Khan, Subordinate Judge of Saharanpur, dated the 1st March, 1881.