*Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Muhammad Raza.*

1926 *February*, 26.

RANA UMA NATH BAKHSH SINGH (PLAINTIFF-APPELLANT) *v.* RAM BAKHSH SINGH AND ANOTHER (DEFENDANTS-RESPONDENTS).*

*Oudh Rent Act, section 107H—Under-proprietary rights—Jurisdiction of civil and revenue courts—Civil court's power to give a declaration about under-proprietary rights under section 107H.*

Where the defendant never asserted ordinary under-proprietary rights as known to law but only asserted under-proprietary right as could be created under section 107H of the Oudh Rent Act, in other words, potential rights in the future and not actual rights in the present, *held*, that a suit by the landlord for a declaration that the defendant had no under-proprietary rights could not be maintained in the civil court. The creation of under-proprietary rights under section 107H, of the Oudh Rent Act, being in the exclusive jurisdiction of revenue courts a civil court would have no jurisdiction to issue a declaration in respect of such a title. [20 O.C., page 8, referred to.]

STUART, C. J., and RAZA, J. :—Rana Sir Sheoraj Singh, father of the plaintiff-appellant Rana Uma Nath Bakhsh Singh, put a certain Ram Bakhsh Singh in possession of an area of 50 bighas, 5 biswas, 16 biswansis in the village of Seora on the 20th of August, 1910, on a rent of Rs. 75 a year. Ram Bakhsh Singh, who is defendant-respondent in this case, and his wife have been in possession of this area from then till now. They have never been ejected, although an attempt was made to eject them. They are paying the rent fixed. This is common ground. Sir Sheoraj Singh died in 1920 and was succeeded by the present plaintiff-appellant. Very

* First Civil Appeal No. 14 of 1925, against the decree of Mirza Munim Bakht, Additional Subordinate Judge of Rae Bareli, dated the 30th of October, 1924.

shortly after the death of Sir Sheoraj Singh the plaintiff-appellant issued a notice of ejectment upon the defendant-respondent No. 1, under the provisions of section 55 of Act XXII of 1886, as it was before the recent amendments of 1922. This notice of ejectment is not on the record, but it is admitted by the appellant's learned Counsel that in order to issue such a notice effectively, it was necessary to assert that the defendants-respondents were tenants not having a right of occupancy and not holding under special agreement or decree of court. Defendant-respondent No. 1, thereupon filed a suit under section 56 of the Act (as it was then) contesting the notice. The plaintiff-appellant, who was defendant in that suit, maintained that he had a right to eject him; but at a certain period in the hearing of the suit he withdrew the notice of ejectment, thereby consenting for the time being to the retention by the defendants of the land in question. The Assistant Collector did not decree the suit in favour of the defendant-respondent No. 1, who was then plaintiff, in very clear terms but he did decree the suit in his favour. The words he used were these :—

> " Notice issued by defendant, as prayed by the defendant, is cancelled. Case to be struck off from the register and consigned to the record. The plaintiff shall remain in possession of the land as usual ".

This order is dated the 27th of October, 1921. The plaintiff-appellant then filed a suit in the civil court on the 16th of September, 1922 asking for a declaration that the two defendants-respondents had neither superior nor under-proprietary right in the land in question under a certain *sanad* of the 20th

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of August, 1910 and further for a declaration that the *sanad* was legally ineffectual and unfit to be admitted in evidence as against the plaintiff and that the defendants-respondents could have no right under the aforesaid *sanad*. The learned Subordinate Judge has dismissed the plaintiff-appellant's suit on the 30th of October, 1924 on the ground that no cause of action had arisen to him; and against the dismissal on that ground the present appeal is preferred.

The first point which we propose to consider is the question of valuation for the purpose of jurisdiction. This point is important. The suit being brought for a declaratory relief the court fee paid was at fixed rates, but for the purpose of jurisdiction the plaintiff-appellant valued the relief at Rs. 10,000. The defendants-respondents asserted that the relief should not be valued at more than Rs. 4,500. The learned Subordinate Judge arrived at the conclusion that Rs. 4,500 was a reasonable valuation and accepted it. The plaintiff-appellant, however, has preferred an appeal to this Court on the assertion that the valuation is Rs. 10,000. The point is important because upon its decision must be determined the question of jurisdiction. If the valuation is correctly Rs. 4,500 the appeal lay to the District Judge and this Court has no jurisdiction. We consider however that, although the valuation of Rs. 10,000 is excessive, the valuation of Rs. 4,500 is too little. We have examined the evidence upon this point and we consider that there is force in the appellant's contention that as the Rs. 75 rent which has been paid is a favourable rent the market rent must be greater. We do not wish to determine finally the market rent upon the land. It may be necessary for that point to be considered in subsequent matters, but this much we can say with confidence that Rs. 75 is

clearly a very favourable rent and that the market rent must be at least Rs. 200. At 30 years' purchase this would come to Rs. 6,000 and we should accordingly put the correct valuation at Rs. 6,000 which is more than Rs. 5,000 and less than Rs. 10,000. We, therefore, have jurisdiction to decide this appeal.

We now come to the only point to be decided at present. Had the plaintiff-appellant a cause of action when he brought this suit? In order to decide this point it is necessary to examine with some care the positions taken by the two parties. The plaintiff-appellant has not in his plaint definitely stated the position which he assigns to the defendants-respondents, but in the course of argument it was admitted to us that he considered them to be agricultural tenants with no special rights and considered himself to be landlord. The defendants-respondents did not either put their position very clearly, but in the course of argument their learned Counsel has informed us that they set themselves up as persons holding land at a favourable rate of rent under a grant and that they acquired the land in perpetuity by a written instrument for valuable consideration.

As the plaintiff-appellant is asserting that the defendants-respondents are his tenants, and the land is agricultural land in Oudh, his only method of recovering possession of the land would be under the provisions of the Oudh Rent Act by ejectment, and he thus has clearly no title to recover this possession through a civil court. So in considering what the cause of action is, it must be carefully borne in mind what his remedy can be against the defendant-respondents. It can only be by the issue of a notice of ejectment under the Rent Act the validity of which can be contested in a rent court. It is to be observed

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that that is the remedy that he took. His case is that the cause of action arose owing to certain statements made by defendant-respondent No. 1 in the suit which he brought to contest that notice, and by the fact that he supported those statements by producing the *sanad*. We shall first see what these statements are. They are contained in the second paragraph of the defendant-respondents' plaint. We give their translation—

*Paragraph* 2.—The notice is liable to be cancelled for the following grounds :—

"(*a*) The plaintiff is not a mere tenant, but he is an under-proprietor of the land in dispute along with other land."

"(*b*) The plaintiff holds the land on favourable rent and is not liable to be ejected by notice."

"(*c*) In lieu of the distinguished services of the plaintiff and his family the defendant and his father Sir Rana Sheoraj Singh having taken a large sum as Nazrana, Sir Rana Sheoraj Singh, taluqdar of Khajurgaon gave a grant of 50 bighas, 6 biswansis land situate in village Seora, pargana and tahsil Dalmau, district Rae Bareli, to the plaintiff in perpetuity and put him in possession thereof. Sir Rana Sheoraj Singh has also given a written *sanad* to the plaintiff with respect to the same. This grant has been maintained and kept subsisting even by the defendant in his writings and made it binding upon himself; rather this grant was made to the plaintiff by the efforts

and on the recommendation of the defendants."

The plaintiff's case is that by making the first statement and producing a *sanad*, which is on the record of this case as exhibit A22, the defendant-respondent No. 1 made an assertion of under-proprietary title which gave him a cause of action to apply for a declaration in the civil court that the defendants-respondents have neither proprietary nor under-proprietary rights. In the eighth paragraph of his plaint in the present suit he says: "That the cause of action in respect of this suit accrued within the jurisdiction of the Court of the Subordinate Judge of Rae Bareli on the 17th of July, 1921, when the defendant produced evidence to prove the *sanad* and the revenue court did not pay any heed to the objection of the plaintiff at village Seora, pargana Dalmau." The passage might have been drafted better but we are ready to accept the position taken by the learned Counsel for the plaintiff-appellant on this point. It is undoubtedly the case, as was laid down by their Lordships of the Privy Council in *Raja Mohammad Abul Hasan Khan* v. *Prag and others* (1), that in Oudh the court of revenue has the exclusive jurisdiction to determine what is the status of a tenant of lands, and what are the special or other terms upon which such tenant holds, and that the civil courts have the exclusive jurisdiction to decide whether or not a person in possession of the land holds a proprietary or under-proprietary right in the lands. But in the use of the word "under-proprietary" their Lordships were referring to the ordinary under-proprietary rights as known to law, and there is a peculiar form of under-proprietary right not coming under such rights which can come

(1) 20 Oudh Cases, 8.

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into existence when a tenant, holding rent-free land or land at a favourable rent which is not liable to resumption and which has been acquired in perpetuity by a written instrument and for a valuable consideration, is sued for resumption under the provisions of chapter VII of Act XXII of 1885 as amended at present (there has not, as a matter of fact, been any important change in this provision of the Act since 1901). The provision is contained in section 107H. It is to be remarked that here a person, such as is described in the section—who may be called for convenience a *muafidar*—can be called upon by the superior proprietor, when his land is not liable to resumption, to take upon himself the responsibilities of an under-proprietor in the matter of payment of revenue and to have a rent assessed upon him as an under-proprietor. But it is to be noted that such under-proprietary right is created by the revenue court when the question of the resumption of such land is brought before it. We are of opinion that the decision of their Lordships of the Privy Council was not intended to have reference to under-proprietary titles created under section 107H for it is obvious that the creation of such under-proprietary titles being in the exclusive jurisdiction of the revenue courts a civil court would have no jurisdiction to issue a declaration in respect of such a title. We read paragraph 2 of the defendants-respondent's plaint in the rent case merely to mean that the defendant-respondent No. 1 having received a notice of ejectment, which treated him as a tenant not having a right of occupancy and not holding under a special agreement or decree of court, put forward the following position. He said in effect: "We are not tenants having no right of occupancy and not holding under special agreement or decree of court. We are

tenants holding the land on a favourable rent under a grant in writing for consideration. We cannot be ejected as ordinary tenants. At the most the taluqdar can apply under section 107H to have us declared as under-proprietors holding the peculiar under-proprietary right created by section 107H and assessed to liability to pay land revenue and rent." That is what we understand the plaint to mean when it asserts that the defendant-respondent No. 1 was an under-proprietor. The production of the *sanad* in respect of this plea was essential towards proving the plea and the interpretation of the *sanad*, in respect of this plea was an interpretation which the revenue court alone had jurisdiction to make. In order to decide whether the defendant-respondent No. 1 was or was not liable to ejectment the revenue court had to construe the *sanad*. What the construction should be is another matter. Thus clearly when the plaintiff-appellant comes into this Court asking for a declaration that the defendants-respondents are neither proprietors nor under-proprietors the reply given to him to the effect that they never asserted that they were proprietors and that they only asserted such under-proprietary rights as could be created under section 107H, in other words potential rights in the future and not actual rights in the present, is an unanswerable reply, and shows clearly that the plaintiff-appellant has no cause of action in respect of the statement, however that statement might have been proved. Further in respect of the *sanad* he has no cause of action either, for the *sanad* has so far only been produced in order to resist the ejectment, and there has been and could have been no construction, by the revenue court other than for that purpose. There was nothing to cloud

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the plaintiff-appellant's title to full proprietary rights and no improper assertion of under-proprietary rights, for the defendants-respondents have never claimed at any time proprietary rights and did not claim such under-proprietary rights as could be determined by a civil court. We, therefore, uphold the decision of the learned Subordinate Judge and dismiss this appeal with costs.

*Appeal dismissed.*

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*Before Mr. Justice Gokaran Nath Misra.*

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*March*, 12.

BADRI DIN AND OTHERS (DEFENDANTS-APPELLANTS) *v.* MUNESHAR BAKHSH SINGH AND OTHERS (PLAINTIFFS-RESPONDENTS).*

*Partition proceedings in revenue courts—Co-sharer not setting up his rights in certain plots allotted to another co-sharer, right of, to raise the point in a subsequent suit—mortgagee from a co-sharer in undivided property, remedy of, if the mortgaged land falls in the share of another co-sharer on partition.*

Where in a partition proceeding before revenue courts a co-sharer, who had been in possession of a particular plot under a mortgage, which he claimed to have become irredeemable, failed to set up his proprietary rights with regard to it, *held*, that it was no more open to him to raise the point in a suit for possession brought by the co-sharer to whose share it had fallen after the partition proceedings had become final.

*Held further*, that if a person takes a mortgage of property which is the joint and undivided holding of two or more persons and the mortgage is executed in his favour only by one co-sharer, the mortgagee takes the mortgage subject to the risk that he is liable to be dispossessed and deprived of

* Second Civil Appeal No. 74 of 1925, against the decree of Sheo Narain Tewari, Subordinate Judge of Bara Banki, dated the 15th of October, 1924, reversing the decree of Shiva Charan, Munsif of Fatehpur, Bara Banki, dated the 18th of April, 1923.