

## APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra.

NAWAB ALI KHAN AND ANOTHER (PLAINTIFFS-APPELLANTS  
v. SURAJ BALI AND ANOTHER (DEFENDANTS-RESPONDENTS).\*

1929

January 11,

*Jurisdiction of civil and revenue courts—Suit by a co-sharer is against a landlord for a period when he was not a co-sharer is cognizable by the civil court.*

Where the plaintiff purchased a share in a village and by the same sale-deed the right to recover certain profits which had accrued prior to the execution of the sale-deed was also transferred to him and he brought a suit for the recovery of those profits against the landlord, *held*, that as the suit related to profits for a period when the plaintiff was not a co-sharer in the village, it was cognizable by the civil court and not by the revenue courts.

One of the essential ingredients for a suit to be cognizable by the Revenue Court is that if it is a suit by a landlord it must be against his tenant, if it is by a tenant it must be against his landlord and if it is by a co-sharer it must be against the lambardar or against another co-sharer.

Mr. *Fayaz Ali*, for the appellants.

Messrs. *Girja Saran Lal* and *S. D. Singh*, for the respondents.

MISRA, J. :—This is an appeal arising out of a suit brought by the plaintiffs-appellants for recovery of a certain sum of money as profits for the years 1332 and 1333 *Fashi* due from the defendant-respondent No. 1, who is the lambardar of village Jamalnagar, district Unao, on account of a share situate in the said village. The share originally belonged to defendant-respondent No. 2 from whom the plaintiffs have purchased it on the 17th of November, 1926. The profits had admittedly accrued to defendant-respondent No. 1 prior to the sale-deed and

\*Second Civil Appeal No. 380 of 1928, against the decree of Mirza Mohammad Munim Bakht, Subordinate Judge of Malihabad at Lucknow, dated the 21st of September, 1928, reversing the decree of Saiyed Qadeer Hasan, Munsif of Safipur, at Unao, dated the 17th of August, 1927, decreeing plaintiffs' claim.

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he has transferred the right to recover those profits to the plaintiffs-appellants by the same sale-deed. The suit was brought in the Court of the Munsif of Safipur at Unao. The defence with which we are concerned in this appeal is one of jurisdiction. The defendant No. 1 pleaded that the suit was not maintainable in Civil Court and was cognizable only in the Revenue Court. This point was decided against the defendant-respondent No. 1 by the learned Munsif, who held that since the plaintiffs were not co-sharers at the time when these profits accrued due, the suit could not be maintained in the Revenue Court and was cognizable by the Civil Court. He went into the merits of the case and decreed the plaintiffs' suit for such amount as he found due on account of the profits.

The defendant-respondent No. 1 appealed against this decree and one of the contentions raised on his behalf before the learned Subordinate Judge of Malihabad, who heard the appeal, was that the suit was cognizable in the Revenue Court and not in the Civil Court. This contention was accepted by the Subordinate Judge and he allowed the appeal and directed that the plaint be returned to the plaintiffs for presentation to the proper court. It is against this order that the present appeal has been lodged in this Court.

The main contention urged before me against the order of the learned Subordinate Judge is to the effect that he had erred in holding that the suit was not cognizable by the Civil Court.

After hearing the arguments in the case at some length I have come to the conclusion that the order passed by the learned Subordinate Judge cannot be maintained and that this appeal must be decreed.

It appears to me that one of the essential requirements for a suit to be cognizable by the Revenue Court is

that the parties must occupy a certain position in relation to each other. For instance, if the suit relates to the arrears of rent, the suit in order to be cognizable by the Court of Revenue must be brought by a landlord against a tenant; if a suit is for recovery of a certain holding it must, if it is to be cognizable by the Revenue Court, be one brought by a tenant against a landlord; and similarly if a suit is for profits or settlement of accounts, the suit must, in order to be cognizable by the Revenue Court, be brought by a co-sharer against the lambardar or against the other co-sharers. This will appear from the frame of section 108 of the Oudh Rent Act XXII of 1886. The suits cognizable under that Act have been divided into four classes.

Class A.—Suits by a landlord (against a tenant).

Class B.—Suits by an ur d r-proprietor or a tenant  
— (against a landlord).

Class C.—Suits regarding the division or appraisement of produce (by a tenant against a landlord).

Class D.—Suits by and against lambardar, co-sharer and muafidar.

It would appear from the above classification that one of the essential ingredients for a suit to be cognizable by a Court of Revenue is that it must belong to one of the classes specified above. To make my meaning clear, if the suit is brought by the landlord it must be against his tenant, if it is by a tenant it must be against his landlord; and lastly if it is by a co-sharer it must be against the lambardar, and if against a lambardar it must be by a co-sharer. If the claim is not brought by any of the individuals specified above against another individual mentioned therein the suit will not be cognizable by the Court of Revenue.

It was admitted before me during the course of arguments on behalf of the defendant-respondent No. 1

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that if a claim for profits is assigned by a co-sharer to a stranger, the suit cannot be cognizable by the Court of Revenue, but must be brought in the Civil Court. The obvious reason why such a suit has to be brought in the Civil Court is that the assignee does not happen to be the co-sharer.

It was, however, contended on behalf of defendant-respondent No. 1 that the plaintiffs-appellants are not the assignees of only the profits claimed but are also assignees of the share of the village in respect of which those profits have been claimed and the suit is, therefore, cognizable by a Court of Revenue. I cannot accept this contention, because it appears to me that the fact that the plaintiffs-appellants have purchased the share also ought not to make any distinction in the situation in which the parties really stand. Whether the plaintiffs-appellants have purchased the share or not appears to me to be a matter, which should not affect the forum of the suit in respect of the claim for profits. So far as that claim is concerned it is clear that the plaintiffs-appellants were not at that time co-sharers owning the share in respect of which the profits have been claimed. It was the defendant-respondent No. 1 who was then a co-sharer. If the suit in respect of the profits now claimed had been brought by defendant-respondent No. 2, the suit had been cognizable by the Revenue Court. In my opinion the point, which has to be seen in such a case in order to arrive at a correct decision as to jurisdiction, is whether the plaintiff or the defendant occupied the position during the period for which the profits have been claimed, which would make their suit cognizable by the Revenue Court. If they did not occupy that position at the time for which the profits are claimed, the fact that they now occupy that position would not at all matter,

I am, therefore, of opinion that the suit brought by the plaintiffs-appellants for profits is clearly cognizable by the Civil Court and not by the Court of Revenue.

I, therefore, accept this appeal, set aside the order of the learned Subordinate Judge directing the plaint to be returned to the plaintiffs for presentation to the Court of Revenue. The appeal will now be reinstated at its original number and the learned Subordinate Judge will proceed to decide it on the merits according to law. The appellants will have their costs of this Court from the respondents.

*Appeal allowed.*

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FULL BENCH.

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*Before Sir Louis Stuart, Knight, Chief Judge, Mr. Justice Wazir Hasan, Mr. Justice Gokaran Nath Misra, Mr. Justice Muhammad Raza, and Mr. Justice E. M. Nanavutty.*

GAYA PRASAD (PLAINTIFF-APPLICANT) v. KALAP NATH  
(DEFENDANT-OPPOSITE-PARTY).\*

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*Civil Procedure Code (Act V of 1908) sections 115 and 135—Oudh Rent Act (XXII of 1886), sections 108 and 119—Arrears of rent, suit for—District Judge deciding second appeal under the provisions of section 119 Oudh Rent Act, whether subordinate to Chief Court of Oudh—Revision against the order of a District Judge in a second rent appeal—Chief Court of Oudh, Revisional Jurisdiction of.*

*Per FULL BENCH:—Held, that where the court of a District Judge decides a second rent appeal under the provisions of section 119 of the Oudh Rent Act it is the final court of appeal under that section and is in that connection a court*

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\*Section 115 Application No. 49 of 1928, against the order of Thakur Rachhpal Singh, District Judge of Fyzabad, dated the 18th of August, 1928, reversing the decree of T. B. W. Bishop, Deputy Commissioner of Fyzabad, dated the 23rd of May, 1928, setting aside the decree of Thakur Chattrapal Singh, Tahsildar of Bikapur, dated the 26th of March, 1928, dismissing the plaintiff's suit.