

MISCELLANEOUS CIVIL.

Before Mr. Justice Wazir Hasan, Acting Chief Judge and
Mr. Justice Gokaran Nath Misra.

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November, 19 SHEEO SAGAR *alias* LAL AND ANOTHER (DEFENDANTS-APPELLANTS) *v.* LACHHMAN (PLAINTIFF) AND OTHERS (DEFENDANTS-RESPONDENTS).*

Misra, J. • *Oudh Rent Act (XXII of 1886), chapter VII(A), section 108 (5a)—Suit for resumption of grove land—Jurisdiction of civil and revenue courts—Revenue court's exclusive jurisdiction to try suits for resumption—Revenue courts' finding that the land no longer retains the character of a grove, whether can be assailed in a civil court.*

Under the resumption chapter VII(A), read with section 108, clause 5(a) of the Oudh Rent Act, it must be held that the revenue courts have exclusive jurisdiction to take cognizance of suits brought for resumption of, or assessment or enhancement of rent on land held rent-free. If the revenue courts have, therefore, exclusive jurisdiction to entertain and decide such a suit they must also be considered to have exclusive jurisdiction to try an issue which would be necessary for them to do, in order to take cognizance of a suit of the description mentioned in clause 5(a) and that their decision so arrived at cannot be impugned by an unsuccessful litigant who brings a suit for the purpose in the civil court. The decision of the revenue courts on the question whether the land in suit still retains the character of a grove or not is a finding of a court possessed of exclusive jurisdiction and must, therefore, be deemed as final and cannot be assailed by the plaintiff respondent in the civil court. *Baljit v. Mahipat* (1), *Bhugwandin v. Jagmohan Singh* (2), and *Dilawar Khan v. Kulsum Bibi* (3), followed. *Jagdish Bahadur Singh v. Ragho Ram* (4), and *Durga Prasad v. Ram Charan* (5), referred to.

*Miscellaneous Appeal No. 41 of 1928, against the decree of M. Humayun Mirza, Subordinate Judge of Lucknow, dated the 11th of May, 1928, setting aside the decree of Sitla Sahai, Munsif of South Unnao, dated the 23rd of December, 1926.

(1) (1919) I. L. R., 41 All., 203. (2) (1916) 3 O. I. J., 717.

(3) (1926) 3 O. W. N., 210. (4) (1926) 29 O. C., 271.

(5) (1918) 5 O. L. J., 639.

Mr. *Radha Krishna*, for the appellant.

Mr. *Hakimuddin*, for the respondent.

MISRA, J. :—This is an appeal arising out of an order of remand passed by the Subordinate Judge of Lucknow, dated the 11th of May, 1928.

The suit in which this order of remand was passed was a suit for possession of a grove No. 102 old/218 new, situate in village Terha, district Unao. The allegations upon which the plaintiff-respondent brought the present suit were to the effect that he was the owner of the said grove and the revenue court had wrongfully decreed resumption thereof on the ground that it no more retained the character of a grove. The plaintiff, therefore, alleged that his dispossession was wrongful and being a grove-holder he was entitled to bring the present suit and get the question decided by the civil court that the plot still retained the character of a grove.

The defendants contested the suit mainly on two grounds, namely, that the plot in suit had lost the character of a grove and that the civil court had no jurisdiction to go behind the decision of the revenue court.

The learned Munsif of South Unao, who tried the suit was of opinion that the decision of the question that the plot in suit had lost the character of a grove could not be reopened by the civil court and that the decision of the revenue court on the point was final. In this view of the case he did not try the question as to whether the plot in suit still retained the character of a grove. He therefore, dismissed the suit by his decree dated the 23rd of December, 1926.

The plaintiff carried the matter further in appeal and the learned Subordinate Judge of Lucknow who heard the appeal has taken a different view. He has held that the civil court has got the jurisdiction to decide as to

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whether the plot still retains the character of a grove and whether under those circumstances the plaintiff could be held to be a grove-holder or not. Taking this view of the case he set aside the decree of the Munsif and remanded the case for decision on the merits. It is against this order that the present appeal has been brought.

The main question, therefore, for decision before us is whether in a case like the present one, the decision of the revenue court can be considered final and whether it is open to the civil court to go behind the said decision.

We have heard the parties at considerable length and have come to the conclusion that the view of law taken by the learned Munsif is correct, and his decision must therefore be restored. We now proceed to give our reasons for having come to this conclusion.

Proceedings for resumption in Oudh are governed by chapter VII(A) of the Oudh Rent Act (XXII of 1886). Section 107(bis) of that chapter lays down that nothing in that chapter should apply to a grove so long as it retains its character as such. Section 107(A) lays down that a proprietor of a *mahal* or part of a *mahal* may sue to resume possession, or to have rent assessed on, any land situate in such *mahal* or part of a *mahal* purporting to be held rent-free whether by grant in writing or otherwise. It is admitted in this case, as is the rule in all such similar cases, that no rent was paid by the respondent in respect of the plot in dispute which was held rent-free. Under those circumstances the remedy resorted to by the defendants-appellants by taking proceedings for resumption under chapter VII(A) against the plaintiff-respondent were fully justified by the provisions of section 107(A). The only defence which could have been raised by the plaintiff of the present suit, who was the

defendant in the revenue court, in order to oust the jurisdiction of that court was by alleging that the grove in dispute still retained its character as such. This defence was raised but was finally rejected by the Board of Revenue by its order, dated the 15th of May, 1928. The Board of Revenue held as was held by the court of first appeal that the plot in dispute had ceased to retain the character of a grove.

It appears to us that reading the resumption chapter VII(A) with section 108, clause 5(a) it must be held that the revenue courts have exclusive jurisdiction to take cognizance of suits brought for resumption, assessment or enhancement of land held rent-free. If the revenue courts have, therefore, exclusive jurisdiction to entertain and decide such a suit it should be clear that they must also be considered to have exclusive jurisdiction to try an issue which would be necessary for them to do, in order to take cognizance of a suit of the description mentioned in clause 5(a) and that their decision so arrived at cannot be impugned by an unsuccessful litigant who brings a suit for the purpose in the civil court. We are, therefore, of opinion that the decision of the revenue courts in the present case on the question whether the plot in suit still retains the character of a grove or not must be deemed as final and cannot be assailed by the plaintiff-respondent in the civil court. We are supported in this view by a decision of the late court of the Judicial Commissioner of Oudh reported in *Bhagwandin v. Jagmohan Singh* (1). Mr. LINDSAY (now Sir BENJAMIN LINDSAY) held in that case that a revenue court had exclusive jurisdiction to resume lands granted for the purpose of planting groves which had subsequently lost their character as such and to decide the question. We are in entire agreement with that opinion.

(1) (1916) 3 O. L. J., 717.

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We would in this connection refer to two other cases, one decided by the Allahabad High Court and the other decided by a single Judge of this Court. The decision of the Allahabad High Court to which we would like to refer is the decision, reported in *Baljit v. Mahipat* (1). It has been held by the Allahabad High Court in that case that where a matter, exclusively within the jurisdiction of a Court of Revenue, has tried and decided by that court as between the parties, no such subsequent suit will lie in the civil court having for its sole object the annulment or the decree passed by the Court of Revenue. The single Judge case of this Court will be found reported in *Dilawar Khan v. Kulsum Bibi* (2). This was a case in which it was held that where in a suit between the parties, a revenue court decided that the plaintiff of that suit was a tenant-in-chief and not a sub-tenant, no civil suit could subsequently be maintained by a defendant of that suit for a declaration to the effect that it was he who was the tenant-in-chief and that the plaintiff was his sub-tenant.

The same rule of law is laid down in Smith's *Leading Cases*, volume II, 12th edition at page 755. The rule enunciated is in the following words :—

“that the judgment of a court of exclusive jurisdiction, directly upon a particular point is, in like manner, conclusive upon the same matter between the same parties, coming incidentally in question in another court for a different purpose.”

It was argued on behalf of the plaintiff-respondent that where a grove-holder was illegally dispossessed by the landlord whether out of court or through the rent court, a suit for recovery of the grove land could be successfully brought in the civil court. The learned advocate for the respondent relied upon the decision of one of

(1) (1919) I. L. R., 41 All., 203. (2) (1926) 3 O. W. N., 210.

us reported in *Jagdish Bahadur Singh v. Ragho Ram* (1). In that case it was no doubt held that where a grove-holder was ejected illegally by the landlord whether through the revenue court or out of court, a suit for possession by him would clearly lie in the civil court and he would not be barred from pleading that he was a grove-holder and had been wrongfully ejected by the revenue court. In our opinion this decision does not in any way help the plaintiff-respondent. If a landlord dispossesses a grove-holder, the latter's remedy is obviously to bring a suit against the landlord for recovery of possession of his grove land in the civil court, for the purpose. Such a suit cannot obviously be brought in the revenue court because a grove-holder has been held not to be a tenant.

We might in this connection refer to a ruling of the late court of the Judicial Commissioner of Oudh reported in *Durga Prasad v. Ram Charan* (2) where it was clearly held that the mere fact that the land is liable to resumption or assessment of rent on the ground that the grove had ceased to exist would not make the grove-holder a tenant liable to ejectment by notice. Similarly if a landlord issues a notice of ejectment against a grove-holder and treats him as his tenant, as he must be presumed to do when he issues a notice of ejectment against him, such a notice must be considered to be invalid and the ejectment of the grove-holder in pursuance of such a notice must be deemed to be an illegal ejectment and it would be open to the grove-holder to bring a suit for possession against the landlord in the civil court. This is all that was decided in *Jagdish Bahadur Singh v. Ragho Ram* (1), the decision not having gone further. It was also contended on behalf of the plaintiff-respondent that it had been held in some cases by the Board of Revenue that it was open to the landlord to issue a notice of ejectment

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if the land on which the grove previously stood had lost its character as such. Consequently if a suit to contest that notice was brought in a revenue court, such court must be considered to possess jurisdiction to decide the question whether the plot had lost the character of a grove or not. The argument advanced was to the effect that if the revenue court decided this question and if the civil court was to be bound by it, a grove-holder had no remedy in case a notice of ejection was issued against him through the revenue courts. Our reply to that contention is that in our opinion the proper remedy for a landlord to adopt in such a case is not to issue a notice of ejection against the grove-holder but to take resumption proceedings against him under chapter VII(A) since a notice of ejection could only be issued against a person who is a tenant or who could be treated as such. It appears to us to be clear that a grove-holder is neither a tenant nor can he be considered to be liable to pay rent until rent has actually been assessed upon the said land.

We are, therefore, of opinion that the order of remand passed by the learned Subordinate Judge cannot be maintained. We, therefore, accept this appeal, set aside the order of remand passed by the learned Subordinate Judge and dismiss the plaintiff-respondent's suit with costs in all the three courts.

HASAN, A.C.J. :—I agree that the appeal should be allowed and the decree of the trial court restored. It is quite clear to my mind that the courts of revenue for the purpose of deciding cases of resumption of land under the provisions of chapter VII(A) of the Oudh Rent Act, 1886, have exclusive jurisdiction in that behalf. That jurisdiction is, however, expressly withdrawn by the Legislature in cases where resumption is sought of a piece of land which retains the character of a grove. This is clear from section 107. It follows, therefore, that

with a view to acquire or to divest themselves of such a jurisdiction the courts of revenue must in the very nature of things decide the question if it is raised as to whether the subject-matter of resumption retains the character of a grove or not. It further follows that the courts of revenue must be deemed to be possessed of jurisdiction to decide the issue just now mentioned. Therefore the finding of the court of revenue in the present case that the land in question no longer retains the character of a grove is a finding of a court possessed of exclusive jurisdiction in the subject-matter of this litigation and is conclusive.

By THE COURT :—The appeal is allowed, the order of remand passed by the learned Subordinate Judge is set aside and the plaintiff-respondent's suit is dismissed with costs in all three courts.

Appeal allowed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan, Acting Chief Judge and
Mr. Justice Gokaran Nath Misra.

AJODHIA PRASAD AND ANOTHER (PLAINTIFFS-APPELLANTS) *v.* LAKHPAT AND OTHERS (DEFENDANTS-RESPONDENTS).*

United Provinces Land Revenue Act (III of 1901), sections 110, 111, 112 and 233(k)—Partition of mahals—Party to a partition, whether can challenge the accuracy of partition—Perfect and Imperfect partitions—Decision on a question of title in partition proceedings, how far binding—Partition of several mahals or a single mahal or portion of a mahal, effect of.

Once a particular share is allotted to a party during the course of partition proceedings it is not open to any person who was a party to those partition proceedings to challenge

*Second Civil Appeal No. 163 of 1928, against the decree of S. Shankat Husain, Additional Subordinate Judge of Gonda, dated the 25th of February, 1928, modifying the decree of Girja Shankar, Munsif of Tarabgunj, dated the 10th of November, 1927.

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