

APPELLATE CIVIL

Before Mr. Justice C. M. King, Chief Judge

1935
January, 3

RAM HET AND OTHERS (PLAINTIFFS-APPELLANTS) v. PIRTHI
NATH (DEFENDANT-RESPONDENT)*

*Oudh Rent Act (XXII of 1886), section 108, clause (10)—
Joint patti—Tenants not divided—Lease by one co-sharer—
Tenant dispossessed—Suit by tenant for possession joining all
co-sharers—Suit cognizable exclusively by Revenue Courts—
Decision, whether can be challenged in Civil Court—Jurisdiction
of Civil and Revenue Courts.*

In the absence of proof that in a joint *patti* the tenants of co-sharers are all divided between the co-sharers it is difficult to say that a tenant of a holding in the *patti* should not be considered in the eye of the law as being a tenant of the joint body of co-sharers. If one co-sharer alone executes a lease in favour of a certain person, the co-sharers who have not joined in the execution of the lease also stand as landlords in relation to the tenant and if the tenant is dispossessed, he may, in a suit for possession under section 108, clause (10), Oudh Rent Act, implead them also as defendants. Such suit is exclusively cognizable by the Revenue Court and if that Court passes a decree for possession in favour of the tenant the Civil Court has no jurisdiction to pass a decree for ejection of the tenant treating him as a trespasser.

Mr. *Suraj Narain*, for the appellants.

Mr. *K. N. Tandon*, for the respondent.

KING, C.J.:—This is a plaintiffs' appeal arising out of a suit for possession of certain plots.

The plaintiffs are co-sharers in *patti* Kalka Singh and they claim that the defendant Pirthi Nath is in possession without any title and they seek to eject him as a trespasser. The *patti* Kalka Singh is owned by several co-sharers. In 1922 by virtue of an arbitration award a 1 anna share in the *patti* was decreed to Musammam Ram Dulari and the other 1 anna share was decreed to Ram Het and others, the plaintiffs in the present suit.

*Second Civil Appeal No. 109 of 1933, against the decree of Babu Gauri Shankar Varma, Subordinate Judge of Gonda, dated the 14th of March, 1933, reversing the decree of Pandit Girja Shankar Misra, Munsif of Gonda, dated the 3rd of October, 1932.

In 1928, Musammat Ram Dulari brought two suits against Ram Het and others, her co-sharers, under section 127 of the Oudh Rent Act for ejection as trespassers and decrees were passed in her favour, the second decree being passed on the 19th of June, 1928. Possession was awarded to her in execution of the decrees on the 30th of June, 1928. Very soon after this, namely, on the 9th of July, 1928, Musammat Ram Dulari and the mortgagee in possession of her share, namely, Mahadeo leased the land in dispute to Pirthi Nath, defendant. Subsequently the decrees obtained by Musammat Ram Dulari against Ram Het and others were set aside and possession was restored in favour of Ram Het. Thereupon Pirthi Nath brought a suit under section 108, clause (10) of the Oudh Rent Act against Musammat Ram Dulari and Mahadeo his lessors and also against Ram Het and others the co-sharers in the patti for recovery of possession. His suit was dismissed by the trial Court but was decreed on appeal by the Commissioner and possession was delivered to Pirthi Nath. Thereupon the plaintiffs brought the present suit for possession as against Pirthi Nath on the ground that the lease in his favour by Musammat Ram Dulari was invalid. One of the pleas raised by the defendant was that the Civil Court had no jurisdiction to try the suit. This plea was repelled by the trial Court and the principal issue was found in the plaintiffs' favour. So the suit was decreed by the trial Court.

The lower appellate Court took a contrary view on the question of jurisdiction and, holding that the jurisdiction of the Civil Court was barred, allowed the appeal and dismissed the suit. The plaintiffs therefore come to this Court in second appeal.

The principal question is whether the Civil Court has jurisdiction to try the suit. If it is held that the suit under section 108, clause (10) of the Oudh Rent Act was exclusively triable by the Revenue Court both as

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against Musammat Ram Dulari and Mahadeo the actual lessors and against Ram Het and others the co-sharers in the patti then I think the position is clear that the Civil Court has no jurisdiction to pass a decree having the effect of annulling the decree passed by the Revenue Court.

It has been argued by the appellants that the Revenue Court had no jurisdiction to try the suit under section 108, clause (10) of the Oudh Rent Act as against Ram Het and others, the present appellants, because they were not in any sense landlords of Pirthi Nath. A suit under section 108, clause (10) is a suit by a tenant and it certainly appears that it is intended that the suit should be brought against the landlord of the tenant. The suit is for the recovery of the occupancy of any land from which the tenant has been illegally ejected by the landlord. It is clear that Musammat Ram Dulari and Mahadeo were landlords of Pirthi Nath as they had actually executed a lease in his favour. It is argued however that Ram Het and the other co-sharers could not be treated as landlord in any sense and therefore they were wrongly impleaded as co-defendants and the Revenue Court had no jurisdiction to try the suit as against them. In my opinion there is no force in this contention because it appears from the khewat that the patti is jointly owned by all the co-sharers including the present plaintiffs-appellants. If one co-sharer executes a lease in favour of a certain person as a tenant the lease is not necessarily invalid and ineffectual merely because it has not been executed by every one of the co-sharers jointly. It is unnecessary for me in second appeal to decide whether the lease executed in favour of Pirthi Nath was valid or invalid. That point presumably must have been under consideration by the Revenue Courts in the suit brought by Pirthi Nath under section 108, clause (10). But the only material on the record in relation to that case consists of the judg-

ment of the Commissioner in appeal. It appears from his judgment that the principal point in dispute was whether Pirthi Nath had in fact taken possession of the land leased to him before the period of his alleged dispossession. The Commissioner came to the finding that Pirthi Nath had certainly been in possession of most of the plots leased to him for three years in succession and held that he was entitled to recover possession. The question of jurisdiction does not appear to have been raised at all in the Revenue Courts. Ram Het and the other co-sharers do not appear to have objected that the Revenue Court had no jurisdiction to implead them as co-defendants or to decide the suit as against them. In the absence of proof that the tenants of the co-sharers were all divided between the co-sharers it is difficult to say that a tenant of a holding in the patti should not be considered in the eye of the law as being a tenant of the joint body of co-sharers. The question whether the tenants were divided between the co-sharers has not been considered by the Courts below or argued before me, and I am not in a position to say that Pirthi Nath should not be held to be a tenant of the joint body of co-sharers. If so, then all the co-sharers in my opinion were rightly impleaded as defendants to the suit as they must be held to have been landlords and the decree must be held to have been rightly passed as against all the defendants.

It has further been argued that the Revenue Court had no exclusive jurisdiction to try the suit where the relationship of landlord and tenant was denied. In the suit under section 108, clause (10) the relationship of landlord and tenant between Pirthi Nath the plaintiff and Musammat Ram Dulari and Mahadeo was obviously admitted or certainly not disputed by the two latter persons, and it was only the other co-sharers, Ram Het and others, who disputed the validity of the lease given by Musammat Ram Dulari to Pirthi Nath.

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The Revenue Court found that as a matter of fact Pirthi Nath had taken possession as a tenant under the lease and found that he was entitled to be restored to possession as a tenant. That decision may be right or wrong, but in my opinion the suit was of a nature exclusively triable by the Revenue Courts and no suit can be maintained in a Civil Court having as its principal object the annulment of the Revenue Court decree. If the plaintiffs succeed in getting Pirthi Nath ejected as a mere trespasser it is obvious that they will succeed practically in setting aside the Revenue Court decree. It has been held by a learned Judge of this Court in *Har Nath Singh v. Sri Ram* (1) that when a matter exclusively within the jurisdiction of a Court of Revenue has been tried and decided by the Court, as between the parties, no subsequent suit will lie in a Civil Court having for its sole object the annulment of the decree passed by the Court of Revenue. A similar view was expressed in the case of *Debi Prasad Shukla v. Baij Nath* (2) and other authorities have also been cited before me to the same effect. Certain rulings have been cited before me by the learned Counsel for the appellants as authority for the proposition that even if the Revenue Court decides that a party is a tenant nevertheless such a finding is not final and the point can be reargued in the Civil Courts. I may refer to *Raghubar v. Raja Rampal Singh* (3) and *Ram Autar v. Raja Abul Hasan Khan* (4). These rulings do no doubt lend some colour to his contention but I do not think they are authority for the view that when a plaintiff in the Revenue Courts has established his right to possession as a tenant then it is open to the defendant to obtain a decree from the Civil Court for the ejection of the plaintiff as a mere trespasser.

It is unnecessary for me to consider the question of *res judicata* or the effect of the plaintiffs' agreement to

(1) (1926) 6 O.W.N., 1214.

(3) (1900) 3 O.C., 365.

(2) (1926) A.I.R., Oudh, 506

(4) (1914) 2 O.L.J., 131.

pay Rs.50 as compensation to Pirthi Nath on account of illegal ejection, as in my opinion the Court below was right in holding that the Civil Court had no jurisdiction to pass a decree for the ejection of the defendant as a trespasser after the Revenue Court had passed a decree granting possession to the defendant as a tenant.

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I accordingly dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava
and Mr. Justice G. H. Thomas*

RAJA PIRTHIPAL SINGH AND OTHERS (DEFENDANTS-APPELLANTS) v. RAI BAHADUR RAGHUBAR DAYAL SHUKIA (PLAINTIFF-DEFENDANT)*

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Civil Procedure Code (Act V of 1908), order XXXIV, rule 11(a)(i) and (ii) and clause (b)—“Principal amount”, meaning of—Interest accrued due before suit, whether can be allowed—Interest on costs to be allowed from what date—Rate of future interest to be allowed.

The words “principal amount” as used in order XXXIV, rule 11(a)(i) mean the principal money secured by the deed of mortgage and interest which has accrued due before the suit cannot be regarded as part of the principal amount. It is therefore wrong to allow future interest at the contractual rate on the principal amount and the interest thereon. *R. B. Chhote Lal v. Raja Mohammad Ahmad Ali Khan* (1), relied on.

Under order XXXIV, rule 11(a)(ii), interest on the amount of costs of the suit can be awarded only from the date of the preliminary decree. Therefore, interest on the costs during the pendency of the suit cannot be allowed.

As regards interest subsequent to the date fixed for payment, clause (b) of rule 11 of order XXXIV makes provision for interest on the aggregate of the principal sums specified in clause (a) and of interest thereon as calculated in accordance with that clause, at such rate as the Court deems reasonable.

*First Civil Appeal No. 113 of 1933, against the decree of Babu Mahabir Prasad, Subordinate Judge of Lucknow, dated the 6th of September, 1933.

(1) (1932) I.L.R., 8 Luck., 315.