

## APPELLATE CIVIL

1934  
December 5,

*Before Mr. Justice Bisheshwar Nath Srivastava  
and Mr. Justice Ziaul Hasan*

FAZAL MOHAMMAD KHAN (PLAINTIFF-APPELLANT) *v.*  
MOHAMMAD HABIB AND OTHERS (DEFENDANTS-RESPONDENTS)\*

*Oudh Rent Act (XXII of 1886), sections 32(B), 108(2), (3a), (4), 113, 127 and 135—Civil Procedure Code (Act V of 1908), section 15—Suit for arrears of rent and ejection of tenant—Suit, if cognizable by Assistant Collector, Second Class.*

A suit under section 127, Oudh Rent Act, is not only one for recovery of rent but also involves the determination of the rent, and under clause (2) of that section a decree for ejection of the defendant can also be passed in that suit. Under section 32B(3) a suit for arrears of rent can be coupled with one for determination of rent under section 127 of the Act; and under section 113 of the Act an Assistant Collector of the Second Class is precluded from trying a suit for determination of rent under clause (3a) of section 108 and also one for ejection of a tenant under clause (4) of the section. A suit under section 127 as well as under section 108, clause (2) is, therefore, cognizable by an Assistant Collector of the First Class and not by an Assistant Collector of the Second Class. Section 15, Civil Procedure Code, has no application to such a case, as it is inconsistent with the provisions of section 113 of the Oudh Rent Act.

*Mr. Mohammad Ayub*, for the appellant.

*Mr. Akhtar Husain*, for the respondents.

SRIVASTAVA and ZIAUL HASAN, JJ.:—This is an appeal under section 12(2) of the Oudh Courts Act against a judgment of a learned Judge of this Court.

The plaintiff-appellant sued the respondents under sections 127 and 108(2) of the Oudh Rent Act and claimed Rs.58-8 as arrears of rent. The suit was tried by an Assistant Collector, first class and decreed for Rs.46-15-6. An order of ejection of the defendants was also passed. The defendants appealed to the District

\*Section 12(2) Appeal No. 2 of 1934, against the decree of the Hon'ble Mr. Justice E. M. Nanavutty, Judge of the Chief Court of Oudh, dated the 22nd of January, 1934, reversing the decree of Chaudhri Akbar Husain, I.C.S., District Judge of Sitapur, dated the 27th of August, 1932.

Judge but the appeal was dismissed. They then filed a second appeal in this Court and the learned Judge was of opinion that having regard to the provisions of section 15 of the Code of Civil Procedure, which has been made applicable to suits under the Oudh Rent Act by section 135 of that Act, the suit was cognizable by an Assistant Collector, second class, and that the Assistant Collector of the first class had no jurisdiction to entertain it. He therefore decreed the appeal and setting aside the decrees of the courts below remanded the case to the Court of the Assistant Collector, second class, at Biswan for trial. Against this order of the learned Judge of this Court the present appeal has been filed.

We have heard the learned counsel for both parties and with due deference to the opinion of our learned brother, we are of opinion that the appeal should be allowed. A suit under section 127 of the Oudh Rent Act is not only one for recovery of rent but also involves the determination of the rent and under clause (2) of that section, a decree for ejectment of the defendant can also be passed in that suit. Under section 32B, clause (3) a suit for arrears of rent can be coupled with one for determination of rent under section 127 of the Act. Looking to section 113 of the Act we find that an Assistant Collector of the second class is precluded from trying a suit for determination of rent under clause (3a) of section 108 and also one for ejectment of a tenant under clause (4) of the same section. As the present suit was one not only for recovery of arrears of rent but also for determination of the rent and for ejectment of the defendants, it is clear that an Assistant Collector of the second class could not try that suit. It was urged on behalf of the respondents that the plaintiff-appellant in his plaint did not claim any relief for determination of the rent or for ejectment of the defendants but the plaintiff professedly brought his suit under section 127 as well as under section 108 clause (2) and the determination of rent and ejectment of the defendants are matters

1934

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FAZAL MO-  
HAMMAD  
KHAN  
v.  
MOHAMMAD  
HABIB

*Srivastava  
and Ziaul  
Hasan, JJ.*

1934  
 FAZAL MO-  
 HAMMAD  
 KHAN  
 v  
 MOHAMMAD  
 HABIB

*Srivastava  
 and Ziaul  
 Hasan, JJ.*

necessarily involved in and incidental to a suit under section 127. Section 135 of the Oudh Rent Act lays down that the provisions of the Code of Civil Procedure, 1908, shall, so far as they are not inconsistent with the provisions of this Act, apply to all suits and other proceedings under this Act but as we have shown that owing to the provisions of section 113 of the Act, an Assistant Collector of the second class is not empowered to try suits for determination of rent or for ejection of the defendants, it cannot be said that according to section 15 of the Code of Civil Procedure the present suit should have been filed in the Court of the Assistant Collector of the second class.

We therefore allow this appeal with costs and setting aside the order of remand passed by the learned Judge of this Court restore the decree of the learned District Judge.

*Appeal allowed.*

### MISCELLANEOUS CRIMINAL

*Before Mr. Justice Bisheshwar Nath Srivastava*

1934  
 December 11

MUSAMMAT MAKHANA DEVI (OPPOSITE-PARTY-APPLICANT)  
 v. KAMLA PAT RAM (COMPLAINANT-OPPOSITE-PARTY)\*

*Criminal Procedure Code (Act V of 1898), section 145—Scope and object—Pendency of proceedings under section 145—Suit in Civil Court—Appointment of receiver by civil court—No danger of breach of peace—Criminal Procedure Code (Act V of 1898), section 561A—Unnecessary and useless proceedings under section 145, Criminal Procedure Code, Court's inherent power to drop.*

The object of proceedings under section 145, Criminal Procedure Code, is to prevent breach of peace. Mere institution of a suit in the Civil Court pending proceedings under section 145, Criminal Procedure Code, would not, by itself, be sufficient to justify the dropping of those proceedings, if there is danger of breach of peace which can best be averted by summary proceedings under the section. But, if the Civil Court appoints a receiver and the danger of a breach of peace is removed, there

\*Criminal Miscellaneous Application No. 151 of 1934, against the order of Mr. T. C. Jaini, Special Magistrate, 1st class, Lucknow, for quashing the proceedings pending in his Court.