

## APPELLATE CIVIL

Before Mr. Justice C. M. King, Chief Judge and  
Mr. Justice E. M. Nanavutty

THAKUR BAKHSH SINGH AND OTHERS (PLAINTIFFS-APPELLANTS) v. SUBEDAR ABHAIDAR SINGH AND ANOTHER (DEFENDANTS-RESPONDENTS)\*

1935  
April 17

*Oudh Rent Act (XXII of 1886), section 108(10) and 135—Civil Procedure Code (Act V of 1908), order XXI, rule 100—Tenant dispossessed in execution of decree against third party—Remedy under section 108(10), Oudh Rent Act open—Application under order XXI, rule 100, C. P. C., maintainability of—limitation—Rules of limitation under Oudh Rent Act, if applicable to civil suit—Lis pendens, doctrine of—Transfer during proceedings under order XXI, rule 100—Transferee, if bound by order XXI, rule 100.*

Where a tenant is dispossessed in execution of a decree obtained by the landlord against a third person his right of making an application under order XXI, rule 100, C. P. C. is not barred by the fact that he has an alternative remedy by suit under section 108(10) of the Oudh Rent Act. There is nothing inconsistent with the provisions of the Oudh Rent Act in the tenant utilizing the alternative remedy by an application under order XXI, rule 100.

The rules regarding limitation of suits enacted in chapter 9 of the Oudh Rent Act apply to suits under that Act. They do not apply to suits cognizable by the Civil Court. *Mindai v. Sajid Ali* (1), referred to.

While the right to possession of a property is under litigation no party to the proceedings can according to section 52 of the Transfer of Property Act transfer the property so as to affect the opposite party and a transferee during the pendency of proceedings under order XXI, rule 100, C. P. C. is under the doctrine of *lis pendens* bound by the order passed by the Court against his transferor, although he is no party to the proceedings.

Messrs. *Radha Krishna* and *Ganesh Prasad*, for the appellants.

Mr. *Bhagwati Nath Srivastava*, for the respondents.

\*Section 12(2) of Oudh Courts Act Appeal No. 3 of 1934, against the decree of the Hon'ble Mr. Justice Rachhal Singh, Judge of the Chief Court of Oudh, Lucknow, dated the 13th of February, 1934, upholding the decree of Pandit Kishen Lal Kaul, Subordinate Judge of Sultanpur, dated the 13th of July, 1932.

(1) (1929) 6 O.W.N., 1095.

1935

THAKUR  
BAKHSI  
SINGH  
v.  
SUBEDAR  
ABHAIDAR  
SINGH

KING, C.J. and NANAVUTTY, J.:—This is a plaintiffs' appeal arising out of a suit for possession of certain plots of agricultural land. The plaintiffs' case is that they are entitled to possession of the plots as tenants, that they were wrongfully dispossessed by defendant No. 1, the landlord, in execution of a decree against one Suraj Bakhsh Singh and that they were restored to possession by an order of the Revenue Court passed under order XXI, rule 101 of the Code of Civil Procedure and possession was delivered to them on the 17th of March, 1929, but in the month of June, 1929, they were again dispossessed by defendant No. 2 who claims to be a lessee holding under a lease executed on behalf of defendant No. 1.

The trial Court decreed the plaintiffs' suit, but the lower appellate Court took a contrary view and dismissed the suit, and the decree of the lower appellate Court was upheld on appeal by a learned single Judge of this Court.

The land in suit formed part of the tenancy holding of one Pirthipal Singh. The plaintiffs' case was that the land was divided between Pirthipal Singh and his brothers or nephews, who were the ancestors of the plaintiffs, and that the plots in suit were allotted to their ancestors and that this partition of the holding was recognized by the landlord. After the death of Pirthipal Singh the whole of the holding was entered in the name of Suraj Bakhsh Singh, one of his descendants, and the landlord (defendant No. 1) brought a suit to eject Suraj Bakhsh Singh on the 24th of October, 1927. This suit was decreed and possession of the whole holding was delivered to defendant No. 1 in May, 1928, resulting in the dispossession of the plaintiffs from the plots in suit. On the 23rd of May, 1928, the plaintiffs made an application to the Revenue Court under order XXI, rule 100, claiming that they were in possession of the plots on their own account and that they had been wrongfully dispossessed by the defendant No. 1 in execution of the decree against Suraj Bakhsh Singh. The Court was

satisfied that the plaintiffs were in possession of the plots as tenants on their own account and accordingly directed that they should be restored to possession. Possession was delivered to the plaintiffs on the 17th of March, 1929. During the pendency of the proceedings under order XXI, rule 100, that is on the 31st of May, 1928, defendant No. 1 gave a lease of the plots in suit to defendant No. 2, and, according to the finding of the Court below, defendant No. 2 was not actually dispossessed in spite of the formal delivery of possession to the plaintiffs. He never allowed the plaintiffs to obtain actual possession.

The main question for consideration is what was the effect of the order passed by the Revenue Court on the 5th of September, 1928, allowing the plaintiffs' application made under order XXI, rule 100 and directing that the plaintiffs should be put into possession of the property. Defendant No. 1 did not bring any suit against the plaintiffs to establish the right which he claimed to the possession of the property and therefore under order XXI, rule 103, the order of the Revenue Court, directing that the plaintiffs be put into possession of the property, became conclusive as against defendant No. 1, the landlord. The question is whether this order was binding upon defendant No. 2 the lessee. The learned single Judge took the view that the order could not be binding upon defendant No. 2 for the simple reason that he was not a party to the proceeding. The learned single Judge however seems to have overlooked the fact that the transfer made by defendant No. 1 in favour of defendant No. 2 was made on the 31st of May, 1928, and therefore was made during the pendency of the proceedings under order XXI, rule 100. It appears from the language of his judgment that the learned Judge was under the impression that the plaintiffs filed their application under order XXI, rule 100, *after* the lease had been executed in favour of defendant No. 2. For this reason the learned Judge did not even consider whether the doctrine

1935

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THAKUR  
BAKSHI  
SINGH  
v.  
SUBEDAR  
ABHAIDAI  
SINGH

*King, C.J.  
and  
Nanavatty,  
J.*

1935

THAKUR  
BAKSH  
SINGH  
v.  
SUBEDAR  
ABHAIDAR  
SINGH

King, C.J.  
and  
Nanavutty,  
J.

of *lis pendens* was applicable to the lease executed in favour of defendant No. 2. From the facts stated above it is clear that the lease in favour of defendant No. 2 was executed during the pendency of the proceedings in the Revenue Court consequent on the application made by the plaintiffs under order XXI, rule 100, for restoration of possession. In our opinion therefore the doctrine of *lis pendens* is applicable. At the time when the lease was executed by defendant No. 1 in favour of defendant No. 2 a proceeding was pending in a Court of competent jurisdiction which was not a collusive proceeding and in which the right to possession of the plots in suit was directly and specifically in question between the plaintiffs and defendant No. 1. The defendant No. 1 therefore was precluded by the provisions of section 52 of the Transfer of Property Act from leasing the property in suit so as to affect the rights of the plaintiffs which they obtained under the order made by the Revenue Court under order XXI, rule 101. While the right to possession of the property was under litigation no party to the proceedings could transfer the property so as to affect the opposite party. This means that defendant No. 2, being a transferee *pendente lite*, was bound by the order passed by the Revenue Court against his transferor, although defendant No. 2 was no party to the proceedings.

It has been argued that the provisions of order XXI, rule 100, are not applicable to Revenue Courts in Oudh and that the Revenue Court had no jurisdiction to pass any order under rule 101, order XXI, of the Code of Civil Procedure. This was the view taken by the learned single Judge against whose decree this appeal has been instituted. In our view this proposition is not correct. Section 135 of the Oudh Rent Act enacts 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." The provisions in question therefore are applicable unless it can be shown that they are inconsistent

1935

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 THAKUR  
 BAKHSH  
 SINGH  
 v.  
 SUBEDAR  
 ABHAIDAR  
 SINGH

 King, C.J.  
 and  
 Nanavutty,  
 J.

with the provisions of the Oudh Rent Act. It has been argued that the provisions of Rules 100 to 103 of order XXI of the Code of Civil Procedure are inconsistent with the provisions of the Oudh Rent Act because that Act contains a specific provision in section 108, clause (10) for a suit by a tenant for the recovery of the occupancy of any land from which the tenant has been illegally ejected by the landlord. It is contended that the plaintiffs, when they were dispossessed in execution of the decree for ejectment against Suraj Bakhsh Singh, might have brought a suit against the landlord under section 108, clause (10) and therefore the provisions of order XXI, rule 100, of the Code of Civil Procedure are not applicable. We are not prepared to accept this contention. It may be conceded that the plaintiffs had an alternative remedy by a suit under section 108, clause (10) but we do not think that their right of making an application under order XXI, rule 100, is barred on that account. Under rule 100 the plaintiffs had a remedy by way of an application—a short and summary remedy—and we do not think that this remedy should be held to be barred merely because an alternative remedy was open to the plaintiffs by the institution of a regular suit under section 108, clause (10). In our opinion there is nothing inconsistent with the provisions of the Oudh Rent Act in the tenant utilising the alternative remedy by an application under order XXI, rule 100.

It is also argued that as the possession of defendant No. 2 was not disturbed there was no necessity for him to file any suit for establishing his right to the possession of the property in accordance with rule 103 of order XXI. We agree that there was no need for defendant No. 2 to institute any such suit, as he was no party to the proceedings which resulted in the order that the plaintiffs be restored to possession of the property. This does not mean that he was not affected by that order as in our opinion he was bound by that order under the rule of *lis pendens*. If his landlord and transferor allowed the

1935

THAKUR  
BAKHSI  
SINGH  
v.  
SUBEDAR  
ABHAIDAR  
SINGH

King, C. J.  
and  
Nanavutty,  
J.

order to become conclusive as against himself then it also became conclusive as against defendant No. 2. As defendant No. 2 took the lease during the pendency of the proceedings under order XXI, rule 100, he was bound by the result of those proceedings although he was not a party. The plaintiffs do not rely upon the rule of *res judicata* but they rely upon the rule of *lis pendens* as binding both the lessor and the lessee by the order passed restoring the plaintiffs to possession, and we hold that their contention is well founded.

The respondent has sought to uphold the decree of the learned single Judge on the ground that the present suit was barred by limitation. This is a new plea which was not taken previously in any of the Courts. The argument is that the period of limitation is governed by the Oudh Rent Act because the suit is not of a civil nature. We see no force in this argument. It is conceded that the suit was rightly instituted in the Civil Court in accordance with the decision in *Mindai v. Sajid Ali* (1). The rules regarding limitation of suits enacted in chapter 9 of the Oudh Rent Act apply to suits under that Act. This suit is clearly not a suit under the Oudh Rent Act because it is admittedly cognizable by the Civil Court. No authority is cited for the proposition that the period of limitation for suits instituted in the Civil Court can in any circumstances be governed by the rules of limitation in the Oudh Rent Act.

In our opinion the trial Court has taken the correct view and the plaintiffs' suit should be decreed.

We accordingly set aside the decree of the learned Judge, dated the 13th of February, 1934, and the decree of the lower appellate Court and restore the decree of the trial Court with costs throughout.

*Appeal allowed.*

(1) (1929) 6 O.W.N., 1095.