

1936
 JIWAN LAL
 v.
 PROPERTY
 OF RAM
 RATAN

Srivastava
 and
Nanavutty,
 JJ.

agent should be allowed to plead for his principal. We also feel that if such a practice were countenanced, the result of it would be to allow unqualified persons under the garb of special agents to assume the roll of pleaders and begin regular practice as such. This view also appears to be supported by the decision of JENKINS, C.J., and N. R. CHATTERJI, J. *Hurchand Ray Gobourghan Das v. The Bengal-Nagpur Railway Company* (1), in which it was held that a recognized agent as such has no right of audience.

For the above reason we disallow this application.

Application dismissed.

REVISIONAL CIVIL

*before Mr. Justice Bisheshwar Nath Srivastava
 and Mr. Justice E. M. Nanavutty*

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 February, 13

BEHARI (DEFENDANT-APPLICANT) v. RAJA SYED AHMAD ALI KHAN (PLAINTIFF-OPPOSITE-PARTY)*

Provincial Small Cause Courts Act (IX of 1887), Schedule II, clauses (8) and (13)—Suit by owner of bazar for theka money against purchaser of right to collect dues from bazar, if cognizable by Small Cause Court—Clauses (8) and (13), Schedule II, Small Cause Courts Act, applicability of.

A suit by the owner of a bazar for arrears of *theka* money against a person who had purchased at an auction the right to collect the dues from the bazar on payment of a fixed sum of money every year is not covered by clauses (8) and (13) of the Second Schedule of the Small Cause Courts Act and is cognizable by the Small Cause Court. Clauses (8) and (13) refer to suits against persons who actually occupy or use the land or other property for which they are liable to pay rent or "*malikana*" and "*haq*" etc., but have no application to the case of a person who has purchased the right to collect the dues from a bazar and who holds an intermediate position between the owner and the occupier of the land.

*Section 25 Application No. 11 of 1935, against the decree of Saiyid Khurshed Husain, Judge, Small Cause Court, Lucknow, dated the 20th of December, 1934.

Mr. R. N. Shukla for Mr. Mahabir Prasad Srivastava,
for the applicant.

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KHAN

Mr. Hyder Husain, for the opposite party.

SRIVASTAVA and NANAVUTTY, JJ.:—This is an application under section 25 of the Small Cause Courts Act against the decree of the Judge of the Court of Small Causes, Lucknow. It arises out of a suit for recovery of arrears of *theka* money and interest. The *theka* was in respect of a bazar owned by the plaintiff. The defendant purchased at an auction the right to collect the dues from the bazar on payment of a fixed sum of money every year.

The first contention urged on behalf of the defendant-applicant is that the suit was not cognizable by the Court of Small Causes. Reliance has been placed on clauses (8) and (13) of the Second Schedule of the Small Cause Courts Act in support of this contention. We do not think that any of these clauses applies to the case. In *Ram Lal v. Badal Khan* (1) it was held that suits for recovery of *tahbazari* fees are not suits for rent; they are also not suits for fees which are in the nature of "malikana" or "haq" as contemplated by clause (13) of the second schedule of Act IX of 1887. In the present case, the plaintiff does not sue for enforcement of payment of any "malikana", "haq" or cesses. The defendant did not occupy the bazar and was not liable for payment of any rent, *malikana*, *haq* or cesses. He is sued on the basis of the contract under which he agreed to pay a sum of money every year in consideration of his being given the *theka* of the bazar. Such a "theka" means only a right to realize the "tahbazari" and other dues from the shopkeepers who attend the bazar. Clauses (8) and (13) in our opinion clearly refer to suits against persons who actually occupy or use the land or other property for which they are liable to pay rent or "malikana" and "hak", etc., but have no application to the case of a person in the position of a defendant who

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holds an intermediate position between the owner and the occupier of the land. We accordingly overrule the contention.

*Srivastava
and
Nanavatty,
J.J.*

Next, it was argued that the claim was barred by limitation. The statement in the plaint is rather ambiguous but it is quite clear from the account books produced by the plaintiff that the whole of the rent for 1937 Fasli has been realised. The suit is, therefore, in substance only for the arrears of 1938 Fasli and the amount decreed by the lower Court also represents the same arrears. No question of limitation therefore arises.

Lastly it was also argued that the defendant had paid a sum of Rs.100 in addition to the amount for which credit has been given to him. This plea was not raised in the lower Court and raises a question of fact which we cannot allow to be raised for the first time in revision.

The application therefore fails and is dismissed with costs.

Application dismissed.

APPELLATE CIVIL

1936

February, 1936

Before Mr. Justice Bisheshwar Nath Srivastava

BRIJ BHUSHAN (DEFENDANT-APPELLANT) v. COLLECTOR OF ALLAHABAD (PLAINTIFF-RESPONDENT)*

Oudh Rent Act (XXII of 1886), section 127—Defendant in possession under a bona fide title—Defendant prima facie not trespasser—Section 127, Oudh Rent Act, applicability of.

Where the defendants are in possession under a *bona fide* claim of title and have made out a strong *prima facie* case that they are not trespassers, the provisions of section 127 of the Oudh Rent Act are not applicable. *Sri Autar v. Special Manager, Court of Wards, Berwa Estate* (1), relied on.

Mr. S. N. *Srivastava*, for the appellant.

The Assistant Government Advocate (Mr. H. K. *Ghosh*), for the respondent.

*Second Rent Appeal No. 29 of 1934, against the decree of Mr. E. N. Wanchoo, District Judge of Rae Bareilly, dated the 9th of February, 1934, setting aside the decree of Pandit Gur Charan Niwas, Assistant Collector, First Class, Partabgarh, dated the 21st of September, 1933.

(1) (1931) 8 O.W.N., 1101.