

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge

MIRZA MOHAMMAD SADIQ ALI KHAN (PLAINTIFF-APPELLANT) v. SHAMIM AHMAD (DEFENDANT-RESPONDENT)*

1937
July, 31

United Provinces Land Revenue Act (III of 1901), section 57—Application for correction of Revenue records—Record Officer deciding under chapter IV that land be recorded as under-proprietary tenure bila lagan—Order, if binding on revenue courts—Suit for recovery of under-proprietary rent under section 108(2), Oudh Rent Act, when maintainable.

Where on an application for correction of the entries in the revenue records the Record Officer passes an order to the effect that the land should be recorded as under-proprietary tenure *bila lagan*, held, that the order of the Record Officer is a decision under Chapter IV of the Land Revenue Act and is as such binding on all revenue courts. It might be that the Record Officer was wrong in ordering the land to be recorded *bila lagan* but whether the decision was right or wrong it is binding on all revenue courts under section 57 of the Land Revenue Act, and the landlord must take steps to have the land assessed to under-proprietary rent before he can be allowed to maintain a suit for arrears of rent in the revenue courts.

Mr. Akhtar Husain, for the appellant.

Mr. M. H. Qidwai, for the respondent.

SRIVASTAVA, C.J.:—This is a second rent appeal against the decree dated the 15th of February, 1935, of the learned District Judge of Sitapur affirming the decree passed by an Honorary Assistant Collector of that place. It arises out of a suit for recovery of arrears of rent under section 108, clause 2 of the Oudh Rent Act.

Briefly stated the facts of the case are that in 1870 the predecessor-in-title of the defendant-respondent with certain other persons obtained a decree in the settlement court for under-proprietary rights in respect of an

*Second Rent Appeal No. 24 of 1935, against the decree of H. G. Smith, Esq. I.C.S., District Judge of Sitapur, dated the 15th of February, 1935 upholding the decree of Saiyid Nazir Ahmad, Honorary Assistant Collector, 1st class of Sitapur, dated the 2nd of May, 1934.

1937

MIRZA
MOHAMMAD
SADIK
ALI KHAN
v.
SHAMIM
AHMAD

Srivastava,
C.J.

area of 89 bighas 3 biswas land on *batai* rent. The events which happened between 1870 and 1931 are somewhat obscure for lack of evidence. This much however seems to be certain that somehow the defendant came to be recorded as a non-statutory tenant and the land in suit which is part of the aforesaid area of 89 bighas 3 biswas was recorded in the village papers in the name of the defendant and his father as an ordinary tenant on a cash rent of Rs.25-1-3 per annum. It may also be taken that this rent was in fact paid by the defendant's father and after his death by the defendant. On 9th April, 1931, the defendant made an application for correction of the entries in the revenue records to the Assistant Record Officer who, on the 23rd of January, 1932, passed an order to the effect that the land should be recorded as under-proprietary tenure *bila lagun*.

The plaintiff brought the present suit to recover arrears of under-proprietary rent for 1337 to 1340 Fasli at the rate of Rs.25-1-3 per annum. The defendant took his stand on the decision of the Assistant Record Officer referred to above and denied his liability to pay rent at the rate of Rs.25-1-3 as claimed by the plaintiff. Both the lower courts have held that the decision of the Assistant Record Officer is binding on the plaintiff in the present litigation and have accordingly dismissed the suit.

The decision of the appeal in my opinion turns on the interpretation of section 57 of the Land Revenue Act. This section refers to two distinct matters, namely (1) entries in the record of rights and (2) decisions under Chapter IV of the Land Revenue Act. In the case of entries in the record of rights the section provides that they shall be presumed to be true until the contrary is proved. In the case of decisions under Chapter IV it is provided that they shall, subject to the provisions of sub-section 3 of section 40 be binding on all revenue courts in respect of the subject matter of such disputes. The section further provides that no such entry or

decision shall affect the right of any person to establish in the civil court any interest in land which requires to be recorded in the registers prescribed by clauses (a) to (d) of section 32. I have no hesitation in agreeing with the lower court that the order of the Assistant Record Officer dated the 23rd of January, 1932, is a decision under Chapter IV and is as such binding on all revenue courts. It might be that the Assistant Record Officer was wrong in ordering the land to be recorded *bila lagan* but whether the decision was right or wrong it is binding on all revenue courts under section 57 of the Land Revenue Act. As pointed out by the learned District Judge it was open to the plaintiff-appellant to appeal against that decision but no appeal was preferred on his behalf. I regret I am unable to agree with the contention of the learned counsel for the appellant that he is entitled to ignore the order about the land being *bila lagan* because the defendant in his application for correction had admitted that the land carried a rent of Rs.25-1-3 per annum. It is unnecessary for me to discuss the effect or the value of this admission. At best it might show that the order of the Assistant Record Officer was wrong but that would not affect its binding character on all the revenue courts so long as it stands. In the circumstances I am of opinion that the plaintiff must take steps such as he might be advised to have the land assessed to under-proprietary rent before he can be allowed to maintain a suit for arrears of rent in the revenue courts. The result therefore is that the appeal fails and is dismissed with costs.

Appeal dismissed.

1937

MIRZA
MOHAMMA
SADIQ
ALI KHAN
v.
SHAMIM
AHMAD

Srivastava,
C.J.