

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Moti Sagar.

DASONDHI (DEFENDANT) — Appellant.
versus
 BADAR BAKHSH AND OTHERS (PLAINTIFFS)
 Respondents.

1928

Jan. 11.

Civil Appeal No. 2498 of 1919.

Jurisdiction (Civil or Revenue) — Punjab Tenancy Act, XV of 1887, section 77 (3) (i) — Suit by landlord against tenant for a declaration that plaintiff is entitled to take batai instead of cash malikana.

Plaintiffs, the landlords, sued the defendant for a declaration to the effect that they were entitled to take *batai* instead of a cash *malikana* in respect of certain lands which the defendant held as their tenant.

Held, that the suit is one between a landlord and tenant arising out of the conditions of the tenancy and is therefore exclusively triable by the Revenue Courts, *vide* section 77 (3) (i), of the Punjab Tenancy Act.

Gamu v. Karim Khan (1), and *Sawan Singh v. Rahman* (2) followed.

Rahman v. Hasham (3), dissented from.

Ibrahim v. Akbar (4), referred to.

Second appeal from the decree of F. W. Kennaway, Esquire, District Judge, Hoshiarpur District, dated the 15th August 1919, affirming that of Sayad Abdul Haq, Munsif, 1st Class, Garhshankar, District Hoshiarpur, dated the 10th March 1919, decreasing the claim.

ANANT RAM Khosla, for OBBARD, for Appellant.

GOBIND RAM, for FAQIR CHAND, for Respondents.

The judgment of Court was delivered by—

MOTI SAGAR J.—This was a suit between certain landlords and tenants for a declaration that the former were entitled to take *batai* instead of a cash *malikana* in respect of certain lands. The suit having been decreed by both the Courts below, the defendant

(1) 33 P. R. 1908 (F. B.).

(2) (1920) 55 Indian Cases 799.

(3) 73 P. R. 1910.

(4) 53 P. L. R. 1917 (F. B.).

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tenant has come up in second appeal to this Court. The sole question for determination involved in this appeal is whether the suit was or was not cognizable by a Civil Court. It is urged that the case falls within the purview of section 77 (3) (b) or (i) of the Punjab Tenancy Act, and that it is exclusively triable by the Revenue Courts. In our opinion clause (b) has no application to this case as the suit is obviously not one for an addition to or abatement of rent under section 28 or for commutation of rent. We are, however, clearly of opinion that the case falls under section 77 (3) (i) being a suit between a landlord and a tenant arising out of the conditions on which a tenancy is held. In *Gamu v. Karim Khan* (1) it was held by a Full Bench of the Chief Court that a suit for a declaration that occupancy tenants are not liable to pay *haq dua* dues was cognizable by the Revenue Courts only. This judgment was recently followed by Broadway J. in the case reported as *Sawan Singh v. Rahman* (2) in which it was laid down that a suit for a declaration that the plaintiffs are not liable to pay rent as entered in the revenue records falls within the purview of section 77 (3) (i) of the Punjab Tenancy Act, and was exclusively triable by a Revenue Court. The learned District Judge following *Rahman v. Hasham* (3) has held that as the suit is one for a declaration under the Specific Relief Act it is triable by a Civil Court only. This judgment, however, has specifically been dissented from and should now be considered to have been practically overruled by a Full Bench of the Chief Court in the case reported as *Ibrahim v. Akbar* (4) in which it has been laid down—

“ that there is no foundation for the idea that suits brought under the Specific Relief Act are *ipso facto* entertainable only by Civil Courts and that where a suit falls within the purview of any clause of section 77 (3), Punjab Tenancy Act, that suit must be heard by a Revenue Court, whether or not, so far as the form of the suit or the particular remedy prayed for is concerned, the suit also falls within the purview of any section of the Specific Relief Act.”

The learned counsel for the respondents has not been able to distinguish the present case from the cases

(1) 35 P. R. 1908 (F. B.).

(2) (1920) 55 Indian Cases 739

(3) 73 P. R. 1913.

(4) 68 P. L. R. 1917 (F. B.)

relied on by the opposite party, and the only contention put forward by him is that the suit is one for the correction of a revenue entry and that, as such, it is triable by a Civil Court alone. We are unable to agree with him in this contention. A reference to the plaint makes it quite clear that the suit is one of an entirely different nature, and is not a suit for the correction of a revenue entry but one for a declaration that the plaintiffs are entitled to receive rent in kind and not in cash. But even if the contention that the suit is one for the correction of a revenue entry be sound we think that it would be triable by a Revenue Court alone, and that the jurisdiction of the Civil Courts would be barred under section 158 (-) (VI) of the Land Revenue Act. We have no hesitation in holding that the case falls within the purview of section 77 (3) (2) of the Punjab Tenancy Act and that the Civil Courts had no jurisdiction to hear the suit.

Under section 100 of the Punjab Tenancy Act this Court has the power to order that a decree passed by a Civil Court be registered as a decree of a Revenue Court. No cause against the registration of the decree of the Court of first instance in a Revenue Court with jurisdiction has been shown and such registration does not appear to be prejudicial to either side.

We, therefore, accept the appeal and setting aside the decree of the Lower Appellate Court direct that the decree of the Court of first instance be registered as that of an Assistant Collector of the 1st grade, Hoshiarpur, and that the memorandum of appeal be returned to the appellant for presentation in the Revenue Appellate Court. Under the peculiar circumstances of the case we do not make any order as to costs in the Court of the District Judge.

A. R.

Appeal accepted.

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