

APPELLATE CIVIL.

Before Addison and Bhide JJ.

LABHU (DEFENDANT) Appellant

versus

BALWANT SINGH (PLAINTIFF) HARBANS LAL AND OTHERS (DEFENDANTS)	}	Respondents.
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Civil Appeal No. 786 of 1930.

Punjab Tenancy Act, XVI of 1887, section 77 (3), provisions 1 and 2—Suit partly decided by Civil Court and then returned for presentation to the Revenue Court—whether whole suit goes to the Revenue Court or only the matter cognisable by Revenue Court.

The plaintiff's father sold an occupancy holding to certain persons against whom the landlords brought a suit for ejectment in the Revenue Court on the ground that the sale was voidable at their instance. They obtained a decree and in execution of that decree both the vendor and the vendees were evicted from the tenancy. The plaintiff sued in the civil Court for possession of his tenancy on the ground that he was entitled to be restored to the possession after the sale had been set aside. The landlords pleaded that the occupancy rights had become extinct. This issue was exclusively triable by the Revenue Courts and the trial Court was of opinion that it was necessary to decide it. Another plea raised by the defendants was that the suit had abated in view of the representatives of certain deceased landlords not having been brought on the record, on which the trial Court held that there was only a partial abatement regarding the shares of the landlords concerned, and as that decision did not dispose of the whole suit the Court endorsed upon the plaint the matter for decision which could only be heard and determined by the Revenue Courts as well as the particulars required by Order VII rule 10, Civil Procedure Code, and returned the plaint for presentation to the Collector. One of the defendants preferred an appeal in the Court of the District Judge, who rejected it. He then lodged the present second appeal in the High Court. It was not disputed that an appeal lies

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from the order returning a plaint for presentation to a proper Court, but it was urged that a second appeal does not lie in such a case. For the appellant it was contended that a second appeal was competent to the High Court as regards the portion of the suit decided by the Civil Court, apart altogether from the right of appeal given under the Code from the order of the Court returning the plaint for presentation to the Collector.

Held (repelling the contention) that the second appeal was not competent as, under proviso 2 of section 77 (3) of the Punjab Tenancy Act, the whole suit goes to the Collector for trial and not merely that matter which could only be heard and determined by the Revenue Courts.

The Civil Court must decide such a suit as the present if it can do so without deciding a matter which can be heard and determined only by a Revenue Court. If, however, it becomes necessary to decide such a matter the plaint must be returned for presentation to the Collector, and it is for the Revenue Court then to hear and determine the suit, no matter whether the Civil Court has already expressed an opinion upon certain questions arising in the suit.

Cheta v. Baija, per Addison J. (1), referred to.

Second appeal from the order of Rai Bahadur Lala Rangī Lal, District Judge, Hoshiarpur, dated the 23rd January 1930, affirming that of Lala Labhu Ram, Subordinate Judge, 3rd Class, Hoshiarpur, dated the 26th July 1929, directing that the plaint be returned to the plaintiff for presentation to the Collector.

SHAMBU LAL PURI, for M. L. PURI, for Appellant.

SOHAN LAL, for Respondent.

ADDISON J.—The plaintiff's father sold an occupancy holding to certain persons. The landlords sued in the Revenue Courts for ejectment of the vendees on the ground that the sale was voidable at their in-

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stance. They obtained a decree from the Revenue Court and, in execution of that decree, for some reason or other, the vendor as well as the vendees were evicted from the tenancy. Accordingly the plaintiff sued in the Civil Courts for possession of his occupancy holding on the ground that he was entitled to be restored to possession after the sale had been set aside. There is no question that the suit lay in the Civil Courts. The landlords pleaded that the occupancy rights had become extinct. This issue is undoubtedly one triable exclusively by the Revenue Courts. If, therefore, it became necessary to decide it the provisions of section 77 (3), provisos (1) and (2) of the Punjab Tenancy Act, would apply. In the opinion of the Subordinate Judge, 3rd class, trying this case it became necessary to try this issue. It was pleaded by the defendants that the suit had totally abated in view of the fact that representatives of certain deceased landlords had not been brought on the record in time. The Subordinate Judge held that there was only partial abatement as regards the shares of certain landlords. As his decision did not dispose of the suit, he endorsed upon the plaint the matter for decision which could only be heard and determined by the Revenue Courts as well as the particulars required by Order VII, rule 10, Civil Procedure Code, and returned the plaint for presentation to the Collector.

One of the defendants preferred an appeal in the Court of the District Judge, who rejected the appeal. The same defendant has preferred this second appeal in this Court.

It was contended before us that a second appeal did not lie and it seems to me that this contention must prevail. An appeal lies from the order returning a

plaint for presentation to a proper Court, but a second appeal does not lie in such a case. There is no dispute about this.

An attempt was, however, made to argue that a second appeal lay to this Court as regards the portion of the suit decided by the Civil Court, apart altogether from the right of appeal given under the Code from the order of the Court returning the plaint for presentation to the Collector. In order to decide this question it is necessary to set forth section 77 (3) with its two provisos in full.

“ The following suits shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted :—

Provided that—

(1) where in a suit cognizable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, the Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by Order VII rule 10, Civil Procedure Code, and return the plaint for presentation to the Collector;

(2) on the plaint being presented to the Collector, the Collector shall proceed to hear and determine the suit where the value thereof exceeds Rs. 1,000 or the matter involved is of the nature mentioned in Section 77 (3), First Group, of the Punjab Tenancy Act, 1887, and in other cases may send the suit to an Assistant Collector of the first grade for decision ”.

It became necessary in this case to decide a matter which could be heard and determined only by a

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Revenue Court. The trial Judge, therefore, correctly endorsed this upon the plaint, together with the particulars required under Order VII, rule 10, Civil Procedure Code, and returned the plaint for presentation to the Collector. Proviso (2) is to the effect that upon such a plaint being presented to the Collector, the Collector shall proceed to hear and determine *the suit* where the value is such that he must try himself, while in other cases he is authorized to send the suit to an Assistant Collector of the 1st Grade for decision. This proviso is very clearly worded, and I am compelled to hold that what is meant is that the whole suit goes to the Collector for trial and not that matter which could only be heard and determined by the Revenue Courts. This follows from the wording of the two provisos. It was objected that this would mean that the same plea of abatement could be taken before the Revenue Court, though it had been rejected by the Civil Court. This may or may not be so (as to which we express no opinion). Where the Civil Court can come to a final decision of the suit without deciding any matter which can be heard and determined only by a Revenue Court it must do so and an appeal would lie to the District Judge in such a case as well as a second appeal to this Court. This is pointed out in my judgment in the Full Bench case—*Cheta v. Baija* (1). My judgment did not go into the question, what would happen when the plaint was returned for presentation to the Collector as that question was not before the Full Bench. This is the first time that I have seen this question raised, and that is why I referred it to a Division Bench when it came before me sitting alone. It is true that Tek

(1) (1928) I. L. R. 9 Lah. 38, 59, 60 (F. B.).

Chand J., in his judgment in the Full Bench case at pages 61 and 62, seems to contemplate that there may be a second appeal to this Court as regards part of the case, and a second appeal to the Financial Commissioners as regards the other part, but that question was not argued and this remark was merely obiter. In my judgment there is no escape from the conclusion that the Civil Court must decide such a suit as the present, if it can do so without deciding a matter which can be heard and determined only by a Revenue Court. If, however, it becomes necessary to decide such a matter the plaint must be returned for presentation to the Collector and it is for the Revenue Court then to hear and determine *the suit*, no matter whether the Civil Court has already expressed an opinion upon certain questions arising in the suit.

For the reasons given I would dismiss this appeal on the ground that no second appeal lies. I would leave the parties to bear their own costs as apparently this question has not been raised before.

BHIDE J.—I agree.

A. N. C.

Appeal dismissed.

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