

steps in aid of execution within the meaning of clause (5) of Art. 182.

For the reasons stated above I would affirm the judgment of the Single Judge and dismiss the appeal with costs.

BROADWAY J.—I agree.

N. F. E.

Appeal dismissed.

APPELLATE CIVIL.

Before Tek Chand and Monroe JJ.

NATHU AND OTHERS (PLAINTIFFS) Appellants

versus

UTTAM SINGH (DEFENDANT) Respondent.

Civil Appeal No. 2604 of 1927.

Jurisdiction (Civil or Revenue)—Suit by some of the village proprietors against their co-proprietors—for declaration that they are entitled to graze their sheep in the village shamilat—without payment of certain dues claimed by the defendants—Punjab Tenancy Act, XVI of 1887, section 77 (3) (o)—whether applicable.

Plaintiffs brought a suit in the Civil Court, for a declaration that they had been grazing their sheep and goats from time immemorial over the village *shamilat* without payment of any grazing dues and had been passing them through the village without payment of dues known as *kotwal ki rat*; that they were entitled to do so in future, and that the defendants had no right to receive any grazing dues. The plaintiffs claimed to be proprietors in the village like the defendants, possessing the same rights in the *shamilat* as the defendants. The Senior Subordinate Judge dismissed the suit on the ground that the Civil Court had no jurisdiction to try the suit—*vide* section 77 (3) (o) of the Punjab Tenancy Act.

Held, that as both parties were co-proprietors in the village and the land for the user of which the defendants claimed the dues was the common land of the village, clause (o) of

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v.

THE PUNJAB
NATIONAL BANK,
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sub-section 3 of section 77 of the Punjab Tenancy Act did not apply, and the suit had been properly instituted in the Civil Court.

First appeal from the decree of Mirza Abdul Rab, Senior Subordinate Judge, Kangra at Dharamsala, dated the 12th July, 1927, dismissing the plaintiffs' suit.

KISHAN DAYAL and FAQIR CHAND, for Appellants.

ACHERU RAM and BHAGWAT DAYAL, for Respondents.

TEK CHAND J.

TEK CHAND J.—The plaintiffs-appellants brought a suit in the Court of the Senior Subordinate Judge, Kangra, for a declaration that since times immemorial they have been grazing their sheep and goats without payment of any grazing dues over the village *shamilat* and have been passing them through the village without payment of dues known as *kotwal ki rat*, that they are entitled to graze and pass their flock in future, and that the defendants have no right to receive any grazing dues or the dues known as *kotwal ki rat* from them. In the plaint it was alleged that the plaintiffs were proprietors in the village like the defendants and possessed the same rights in the *shamilat* as the defendants. The learned Senior Subordinate Judge has dismissed the suit on a preliminary objection by the defendants that the Civil Court had no jurisdiction to try it under section 77 (3) (o) of the Punjab Tenancy Act.

It is admitted that both parties are co-proprietors in this village and the land, for the user of which the defendants claim the dues in question, is the common land of the village. The suit is, therefore, between two sets of co-owners of the same land one of whom

resists the rights of the other to use the joint land in a particular manner without payment of certain dues. In my opinion clause (o) of sub-section 3 of section 77 does not apply to a suit of this kind. It contemplates a dispute of the nature described in the clause between a "land-owner" and a person who does not hold that position in respect of the land in question. I hold, therefore, that the suit was properly instituted in the Civil Court and has been wrongly dismissed.

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I would accordingly accept the appeal, set aside the judgment and decree of the learned Senior Subordinate Judge and remand the case to him for decision on the merits. Court-fee on this appeal shall be refunded; other costs shall be costs in the cause.

MONROE J.—I agree.

MONROE J.

A. N. C.

Appeal accepted.

Case remanded.
