LETTERS PATENT APPEAL.

Before Tek Chand and Monroe JJ.

1934

May 16.

BHAGTA NAND (PLAINTIFF) Appellant

versus

MOHAMMAD NAWAZ KHAN (DEFENDANT) Respondent.

Letters Patent Appeal No. 71 of 1930.

Jurisdiction—Civil or Revenue—Suit for declaration by gaddi-nashin—*that he is not liable to pay* haq buha *(door tax)—leviable from non-proprietary residents—Punjab Tenancy Act, XVI of 1887, Section 77 (3) (j).*

During the pendency of a suit against him in the Revenue Court for recovery of arrears of *haq buha* (door tax), leviable from all non-proprietary residents of the village under the provisions of the *Wajib-ul-arz*, the *gaddi nashin* of a shrine brought the present suit in the Civil Court for a declaration that he was not liable to pay the tax as he occupied a peculiar position in the village and did not belong to the class of persons from whom *haq buha* was leviable. The jurisdiction of the Court was challenged by the defendant-respondent under Section 77 (3) (*j*) of the Punjab Tenancy Act, 1887.

Held, that the jurisdiction of the Civil Court was not barred by Section 77 (3) (*j*) of the Punjab Tenancy Act, 1887.

Singh Ram v. *Kala* (1), *Sheikh Muhammad* v. *Habib Khan* (2), and *Karm Ilahi* v. *Sultan Alam* (3), followed.

Gamu v. *Karim Khan* (4), distinguished.

Bila v. *Sultan Ali* (5), referred to.

Letters Patent Appeal from the decree passed by Johnstone J. in C. A. No. 2735 of 1928 on 28th October, 1930, affirming that of Mr. L. Middleton, District Judge, Attock at Campbellpur, dated 24th

(1) (1926) I. L. R. 7 Lah. 173.
(2) 67 P. R. 1905.
(3) 79 P. R. 1911.
(4) 33 P. R. 1908 (F. B.).
(5) 45 P. R. 1918.

October, 1928, which affirmed that of the trial Court, dated 28th November, 1927, dismissing the plaintiff's suit.

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BADRI DAS and ACHHRU RAM, for Appellant.

M. C. MAHAJAN and BARKAT ALI, for Respondent.

TEK CHAND J.—The plaintiff is the *gaddi nashin* of a shrine known as "Deri Baba Than Singh," situate in *Mauza* Kot Fateh Khan, district Attock. The defendant is the principal, but not the sole proprietor of agricultural land in the village. In August 1925 the defendant sued the plaintiff in the Revenue Court for recovery of Rs. 28, alleged to be due to him by the plaintiff as arrears of *haq buha* (door tax) for the preceding fourteen years which, he claimed, he was entitled to levy from all non-proprietary residents and *kamins* in the village in accordance with the provisions of the *wajib-ul-arz*. While this suit was pending the plaintiff, on the 5th January 1926, brought an action in the Civil Court for a declaration that he was not liable to pay to the defendant anything on account of *haq buha*, alleging *inter alia* that as the *gaddi nashin* of a religious institution he occupied a peculiar position in the village and did not belong to the class of persons by whom *haq buha* was payable to the defendant.

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Soon after the institution of the suit in the Civil Court, the plaintiff applied under section 10 of the Code of Civil Procedure that the defendant's suit in the Revenue Court for recovery of arrears of the *haq* be stayed till the decision of the plaintiff's suit by the Civil Court. The defendant, on the other hand, raised a preliminary objection that the Subordinate Judge had no jurisdiction to entertain

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and try the plaintiff's suit, it being cognizable by the Revenue Court only under section 77 (3) (*j*) of the Punjab Tenancy Act. The learned Subordinate Judge rejected the plaintiff's application under section 10 for stay of the revenue suit. He also overruled the defendant's objection as to his jurisdiction to try the plaintiff's suit relying on a judgment of this Court reported in *Singh Ram* v. *Kala* (1). Accordingly both suits proceeded simultaneously in the two Courts. On the 23rd June 1927 the Revenue Court passed a decree for Rs. 28 in favour of the defendant against the plaintiff. In the Civil suit the Subordinate Judge, after an elaborate enquiry into the various questions which arose on the pleadings of the parties, held that the defendant was entitled to levy *haq buha* from all non-proprietors in the village, that the fact that the plaintiff was *gaddi nashin* of a religious institution did not take him out of the category of such non-proprietors, that though as a matter of fact the plaintiff or his predecessors-in-interest had never paid anything on this account to the defendant or his ancestors during the 125 years that the "Deri Baba Than Singh" had been in existence, this circumstance did not destroy the defendant's right to levy the cess. He accordingly dismissed the suit.

On appeal the learned District Judge, while affirming the finding of the trial Court that the defendant was entitled to levy *haq buha* from all non-proprietors and *kamins*, held that the plaintiff as the *gaddi nashin* of the shrine "Deri Baba Than Singh" occupied a peculiar position in the village and as such did not belong to the class of persons

(1) (1926) I. L. R. 7 Lah. 173.

from whom the cess was leviable in accordance with the terms of the *wajib-ul-arz*. He also found as a fact that the cess had never been paid by the plaintiff or his predecessors-in-office since the foundation of the shrine more than a hundred years ago. Accordingly, on the merits the learned District Judge held that the plaintiff was entitled to the declaration prayed for, but disagreeing with the trial Judge he held that the suit was not cognizable by the Civil Court, its jurisdiction being barred by section 77 (3) (*j*) of the Punjab Tenancy Act. In coming to this conclusion the learned Judge observed that the hearing of such a suit by the Civil Court was "clearly against the *intention* of the Legislature when framing section 77 (3), though it may not have been debarred by the *wording* thereof." On this finding, the learned District Judge dismissed the appeal.

The plaintiff lodged a second appeal in this Court, but it was dismissed by Johnstone J., sitting in Single Bench, who agreed with the conclusion of the District Judge on the point of jurisdiction. He, however, granted a certificate to the plaintiff for preferring a further appeal under clause 10 of the Letters Patent.

The only question argued before us is that of jurisdiction, and we have heard lengthy arguments from Mr. Achhru Ram on behalf of the appellant and Mr. Mehr Chand Mahajan on behalf of the respondent. Mr. Achhru Ram urges that the present suit falls within the rule laid down in *Sheikh Muhammad* v. *Habib Khan* (1) and *Singh Ram* v. *Kala* (2), and is distinguishable from the class of cases covered by the decision of the Full

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Bench of the Chief Court in *Gamu* v. *Karim Khan* (1), on which the District Judge, as well as the learned Judge who heard the second appeal, had based their decision. It is conceded by Mr. Mehr Chand that the present suit is on all fours with the cases cited by Mr. Achhru Ram and, if they were correctly decided, it must be held that the Civil Court had jurisdiction to entertain, try and decide it.

In *Sheikh Muhammad* v. *Habib Khan* (2) it was held by Clark, C. J., that a suit for a declaration that *kamiana* dues are not recoverable from such residents of a village, who are owners of their houses and cultivators, does not come under clause (*j*) of sub-section (3) of section 77 of the Punjab Tenancy Act and is cognizable by the Civil Court. The learned Chief Judge held that the suit before him was correctly described as a " suit for a declaration that the plaintiff shall be lifted out of a category affected by a clause in the *wajib-ul-arz* under which they are liable to pay *kamiana* " and that such a suit was of a very different kind from a suit for a sum payable on account of village cesses or expenses, and it is difficult to think that the words used in clause (3) of section 77 (3) that the Civil Courts are not to " take cognizance of any dispute or matter with respect to which any suit might be instituted," were intended to extend to, or operate so widely as to cover, a suit of this kind. As already stated this ruling was followed by Addison J. in *Singh Ram* v. *Kala* (3), which was a case very similar to the one before us. There, the *lambardars* of a village in the Rohtak district had sued certain

(1) 33 P. R. 1908 (F. B.). (2) 67 P. R. 1905.
(3) (1926) I. L. R. 7 Lah. 173.

persons in the Revenue Court for recovery of *kurhi kamini* cess and had obtained a decree. Thereupon those persons brought suits in the Civil Court for a declaration that they were not liable to pay *kurhi kamini*, as they did not belong to the class of cultivators or *kamins* from whom such dues were payable in accordance with the *wajib-ul-arz* relied upon by the *lambardar*. The learned Judge, following *Sheikh Muhammad's* case (1) held that the suit did not fall under clause (*j*) of section 77 (3) of the Tenancy Act and was cognizable by the Civil Court. He observed that "though the *lambardars* could sue in the Revenue Court for the recovery of the cess, there was nothing to debar the person proceeded against from bringing a suit for a declaration in the Civil Court."

Mr. Mehr Chand has strenuously contended that *Sheikh Muhammad* v. *Habib Khan* (1), is inconsistent with the Full Bench decision in *Gamu* v. *Karim Khan* (2), and must be considered to have been overruled by it. In considering this argument, however, it must be borne in mind that the learned Judges composing the Full Bench [one of whom was responsible for the decision in *Sheikh Muhammad* v. *Habib Khan* (1)], distinctly laid down that there was a clear distinction between the case before them and the class of cases dealt with in *Sheikh Muhammad's* case, and that while the jurisdiction of the Civil Court to hear and decide the former was barred, the latter was clearly within the jurisdiction of the Civil Court. In order to ascertain the exact significance of this distinction, we sent for the Chief Court record in

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Gamu v. *Karim Khan* (1). A reference to the record disclosed that the plaintiff in that suit had sued for a declaration that *haq buha* was not leviable at all in the village. In distinguishing that suit from *Sheikh Muhammad* v. *Habib Khan* (2), the Divisional Judge (the appeal against whose decree was eventually referred to the Full Bench) pointed out that "the prayer was not that the plaintiff did not belong to the class liable to pay *haq buha* but the allegation was that no such class existed in the village." It will thus be seen that there was a material distinction between the case which the Full Bench had to decide and the type of cases with which we are concerned, and this distinction was clearly recognised by the learned Judges themselves, as is clear from the following quotation, which fully disposes of the contention of Mr Mehr Chand :—

"While we hold that declaratory suits, which clearly differ in form only from suits for money already due and clearly cognizable by a Revenue Court only, are also triable by a Revenue Court, we are very far from laying down that every declaratory suit, in regard to every matter in regard to which some kind of suit can be tried exclusively by a Revenue Court, is also necessarily triable only in a Revenue Court. It has always in every particular case to be shown that the jurisdiction of the Civil Courts, which *primâ facie* exists, has been specifically ousted. We find on examining the rulings in *Sheikh Muhammad* v. *Habib Khan* (2) for instance, that the suit there was of a different nature; *although certain cesses were payable, the plaintiffs were not themselves liable to payment*

(1) 33 P. R. 1908 (F.B.). (2) 67 P. R. 1905.

by reason of not belonging to the classes from which payment could be claimed. That case is, therefore, distinguishable from the present one. Each case must be considered on its own merits and it may be laid down, as a broad general principle, that the jurisdiction of the Civil Courts is only ousted by section 77 of the Tenancy Act in regard to such classes of cases, as are clearly actually covered by the precise terms of one or other of the clauses of that section, or which are clearly in substance identical with the classes covered by the clauses of that section, though differing in form."

The question was re-examined by Reid C. J. in *Karam Ilahi* v. *Sultan Alam* (1), and the distinction set out above re-affirmed. The learned Judge observed that " a suit for a declaration that, although certain cesses were payable, the plaintiffs were not themselves liable to payment by reason of not belonging to classes from which payment could be claimed," was cognizable by the Civil Court. This conclusion is, as already stated, in accord with the view taken in *Singh Ram* v. *Kala* (2).

Mr. Achhru Ram strenuously argued before us that the reasons, on which the decision of the Full Bench in *Gamu* v. *Karim Khan* (3) was based, were erroneous and that that case should not be accepted as laying down good law even with regard to suits of the type from which the reference to the Full Bench arose. But I do not think it necessary to go into this question, for the Full Bench judgment itself clearly lays down that its conclusion did not apply to the

(1) 79 P. R. 1911. (2) (1926) L. L. R. 7 Lah. 173.
(3) 33 P. R. 1908 (F. B.).

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class of cases with which we are concerned here and which, in its opinion, were clearly cognizable by Civil Courts. It will be sufficient to say that the head-note of that case is too widely expressed, and must be read subject to the limitations set out in the body of the judgment of the Full Bench, particularly in the passage quoted above.

After giving due weight to the arguments of counsel, I have no doubt that *Sheikh Muhammad* v. *Habib Khan* (1) and *Singh Ram* v. *Kala* (2) were correctly decided, and that their soundness is not affected by the decision in *Gamu* v. *Karim Khan* (3).

The learned District Judge, while conceding that the cognizance by Civil Courts of suits, like the one before us, was not barred by the *wording* of section 77 (3) of the Tenancy Act, expressed the opinion that their hearing by a Court, other than Revenue Courts, was "clearly against the *intention* of the legislature while framing that section." It is hardly necessary to point out that this is an entirely erroneous way of interpreting statutes. It is one of the elementary rules of construction that the intention of the Legislature is to be gathered from the words used by it, and where the wording is plain and unambiguous and admits of but one meaning only, the Courts must give effect to it. In such cases, it is beyond the province of the Judge to speculate as to what the 'real intention' of the framers of the statute was. As has been well observed in an English case the "question for the interpreter is not what the Legislature meant but what its language means, *i.e.* what the Act has said that it meant."

(1) 67 P. R. 1905. (2) (1926) I. L. R. 7 Lah. 173.
(3) 33 P. R. 1908 (F. B.).

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The learned District Judge has also referred to the *proviso* to sub-section (3) of section 77 of the Tenancy Act, which was added by the Amending Act III of 1912. But both counsel were agreed before us that in this case the *proviso* was inapplicable and that if the trial of the suit by the Civil Court was not excluded by the wording of the substantive part of sub-section (3), it could not be barred by the *proviso*.

Mr. Mehr Chand referred us to cases decided under clause (*i*) of section 77 (3), which deals with "suits between landlord and tenant arising out of the lease or conditions on which a tenancy is based." It will be seen that the phraseology of that clause is materially different from, and much more comprehensive than, that of clause (*j*), and, therefore, those cases are not of any real assistance. It may, however, be mentioned that in *Bila* v. *Sultan Ali* (1), it was held by Shah Din J. that a Civil Court has jurisdiction to entertain a suit for a declaratory decree that the plaintiff has acquired a proprietary title in the land in suit, notwithstanding that a Revenue Court has already held that he is merely a tenant of the defendant.

For the foregoing reasons, I hold that the suit was properly brought in the Civil Court and that it had jurisdiction to try and decide it.

As already stated, on the merits, the findings of the learned District Judge are clearly in favour of the plaintiff. The learned Judge has definitely stated that if he had found for the plaintiff on the question of jurisdiction he would have accepted his appeal and decreed the suit. These findings on the

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merits were not challenged by counsel for the respondent before the Judge in Chambers or before us, as indeed they could not possibly be in second appeal, and are final and conclusive between the parties.

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The result, therefore, is that this appeal must be accepted, the decrees of the Courts below reversed and the plaintiff's suit decreed with costs throughout.

MONROE J.

MONROE J.—I agree.

A. N. C.

Appeal accepted.

LETTERS PATENT APPEAL.

Before Tek Chand and Abdul Rashid JJ.

KANSHI RAM AND ANOTHER (PLAINTIFFS) Appellants

versus

SITU AND ANOTHER (DEFENDANTS) Respondents.

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May 18.

Letters Patent Appeal No. 35 of 1931.

Custom—Succession—"Adopted" son—whether succeeds to a share in natural brother's estate—in presence of another natural brother—Riwaj-i-am—*Kangra District.*

T, the father of the defendants-respondents was "adopted" by his paternal uncle and under the Customary Law succeeded to his property, but was excluded from a share in the estate of his natural father by his brothers D and G. D died childless and his estate devolved on his widow for life. On the death of the widow the question arose whether G and T would succeed equally to the land of D, or whether G would exclude T.

Held, that under the Customary Law, T would be excluded by G on the principle that an heir appointed under the Customary Law does not, in the presence of a natural brother, succeed to the property of his natural father, though he does not lose his right to succeed to his collaterals.