

ALLAHABAD HIGH COURT

Ananti

Vs.

Chhannu

(Sulaiman mukherji Boys Kandall and King JJ.)

18.12.1929

JUDGMENT

King JJ.

1. This is a reference under Section 267, Agra Ten. Act of 1926. The matter came up before two learned Judges of this Court. They found that they were unable to accept the view taken in the case of *Nandan, Mallah v. Mohammad Ali*¹ and, accordingly, referred the matter to a larger Bench.

2. The facts relating to the case are set forth in the order of reference and may be, very briefly stated as follows. The plaintiff instituted the suit, out of which this reference has arisen, in the Court of the Munsif of Haveli, Benares, on the allegation that her husband, Jangi, separated from his brother, Deo Saran, 25 years prior to the institution of this suit, that the plaintiff's husband died more than 10 years before the suit, and that for the last 10 years the plaintiff had been in possession of her husband's occupancy holding as his heir. She added that the defendants who were the descendants of Deo Saran, interfered with the crops grown by her on her own land and, eventually took possession of her holding. She sued for recovery of possession and for recovery of mesne profits. The defendants in their written statement contended that Deo Saran and the plaintiff's husband Jangi were joint, that Jangi having died as a joint member of the family, the defendants were the tenants of the holding and the plaintiff had no right. They also pleaded that the suit was not cognizable by the Munsif's Court.

3. The Munsif's difficulty was that if the allegations in the plaint were accepted the suit would be cognizable by the civil Court, but if the defense, as mentioned in their written statement, could be considered without an inquiry as to its truth or otherwise, the suit would be cognizable by the revenue Court, having regard to the provisions of Sections 99 and 230, Agra Ten. Act, 1926. He accordingly framed two questions and made the reference. The two questions are as follows:

1. Where a plaintiff alleging himself to be a tenant sues a defendant treating him as a

trespasser, for possession and compensation regarding a holding or a part thereof, and the defendant pleads tenancy, then having regard to Sections 99 and 230 of the Act (3 of 1926), is the suit maintainable in the civil Court?

¹[1929] A.L.J 940

2. Where a tenant on being dispossessed from his holding or part thereof, sues a person for compensation and possession, and also asks for an injunction to restrain the defendants from doing any act prejudicial to the plaintiff's interest, what is the effect, upon the jurisdiction of joining the relief of injunction with that of possession and compensation? Is the suit cognizable by the civil or the revenue Court?

4. Now, as to question 2, it is concluded by the provisions of Section 230, Agra Ten. Act of 1926. The explanation to that section, lays down that if the cause of action on which a suit is to be brought be one in respect of which adequate relief could be obtained by a suit or application in the revenue Court, the mere fact that some relief has been asked for, which the civil Court alone might grant, will not oust the jurisdiction of the revenue Court from hearing the suit or application. This was the view of the law taken by this Court even before the passing of the Tenancy Act of 1926. If this suit for possession and mesne profits be cognizable by the revenue Court, the mere fact that a perpetual injunction has been asked for will not take the case out of the jurisdiction of the revenue Court. This is our answer to the question No. 2 framed by the learned Munsif.

5. The first question which is the more important one, is:

whether a suit, which is framed as one against a trespasser, pure and simple, and which has been rightly brought in the civil Court because it is a suit against a trespasser, will cease to be a suit against a trespasser and become cognizable by the revenue Court, simply because the defendant, in appearing to answer the suit, pleads that he and not the plaintiff is the tenant of the holding and not the plaintiff?

6. It has not been contested before us that the initial right of choosing the forum is with the plaintiff. He is to see in which Court his suit would lie, having regard to the facts of his case, which means the allegations in his plaint, and the valuation of the suit. When the plaintiff has chosen his forum, it will be for the Court in which the suit has been filed or application has been made to see whether, on the allegations made in the plaint or application it is cognizable by it. If the plaint or application be cognizable by that Court, the defense, whatever it may be, will not oust the jurisdiction of the Court to try this suit. It may be that on the facts alleged and established by the defendant, it will be found that the plaintiff's allegations, as made in the plaint, are incorrect or false and that the real relief, which the plaintiff is entitled to get (if any) is not within the jurisdiction of the Court, which is seized of the case, to grant, in such circumstances, the suit will be dismissed, on the ground that the Court is not in a position to grant the relief. This initial position has not been contested before us. In fact the rule is so well established that it is

impossible to controvert it. If any authority were needed we might quote two; in *Tarapat Ojha v. Ram Ratan Kuar*² a Full Bench of five Judges of this Court held that the question of jurisdiction would, initially, depend on the allegations made in the plaint or petition. If the Court found, on these allegations, that it had no jurisdiction to entertain the plaint or petition it would return the same for presentation to the proper Court; if, on the other hand, the allegations made in the plaint or petition gave jurisdiction to the Court to hear it and the defendant appeared to controvert those facts, then the defense would only raise an issue for the Court to determine. At pp. 390 and 391 of the report, their Lordships said:

²[1898] 15 All. 387

In cases to which Section 93 or 95 of Act 12 of 1881 (old Tenancy Act) applies, a denial by a defendant that the relationship of landlord and tenant exists between the parties is immaterial, except in so far as it raises an issue for the revenue Court to determine.

7. The case of *Jageshwar Kuer v. Tilak Dhari Singh*³, was a suit which, as framed, was cognizable by the civil Court, "because it was one to eject a trespasser. On a trial of the suit, it was found that the defendants were not trespassers but non-occupancy tenants. The civil Court, according to the provisions of the Chota Nagpur Tenancy Act (B.C. 6 of 1908), could not grant a decree for ejectment against the tenants. It was accordingly, held that the plaintiff's suit should be dismissed and that the plaint could not be returned for presentation to the proper Court because the suit, as framed, was not for the ejectment of a tenant.

8. This being the ordinary state of the law the question is whether there is anything in Section 99, Agra Tenancy Act of 1926, which reverses the well established rule of law described above.

9. By Section 230, Agra Tenancy Act of 1926, all suits (among others) which fall within the purview of Section 99, Tenancy Act could be heard and determined only by the revenue Court; Section 99, therefore, contains a description of suits. If a plaintiff finds that his suit comes within the purview of Section 99, he is to go to the revenue Court only. Section 99 on the face of it, contains only a description of the suit and nothing else. The language employed, nowhere, lays down that, in certain circumstances, a suit, which is clearly within the jurisdiction of one Court, and which has been rightly presented there, is to be removed from that Court and taken into another Court. Now let us proceed to examine the language of Section 99, so far as it may be applied to this case. We have to remember that the plaintiff says that she is a tenant of a certain holding and that the defendants, without the least semblance of right, have dispossessed her. The defendant's case is that they, and not the plaintiff, are the tenants of the land. Having regard to these facts we will omit that portion of Section 99 from our quotation which does not deal with tenants. Section 99, therefore, reads as follows:

Any tenant... ejected from... his holding... (a) by his landholder or any person claiming as landholder to have a right to eject him, or (b) by any person claiming through such landholder, or person, whether as tenant or otherwise, may sue the person so rejecting

him....

10. In order to file his suit in the revenue Court a person, who claims to be a tenant, has to find out whether, in his proposed suit, the proposed defendant fulfills or not the character of the defendant as described in Section 99, Clause (1), sub-Cls. (a) and (b). If the proposed defendant be, under Cl. (a), the tenant's landholder, or if the proposed defendant be any person claiming as a landholder to have a right to eject the tenant, or, in Clause (b), be any person, claiming through such landholder or person, the plaintiff would be obliged to bring his suit in the revenue Court. This will be the natural meaning of Clause (1), Section 99, having regard to the language employed. But we are asked to read the rule as if the words "claiming as" in Clause (a) means ""pleading in the suit, in his

³ AIR 1924 Pat 267

written statement, to be." In other words, where the word "claiming" has been used under Clause (a), we are expected to read it as meaning "pleading in his defense in the suit that he claims." Similarly in Clause (b) it is expected of us to read the word "claiming" as meaning "pleading, in the defense of the suit, brought against him, that he is claiming." In our opinion such interpretations cannot possibly be admissible. If such interpretations were allowed the position of the plaintiff would be entirely precarious. He would not know what was the defense which the proposed defendant was likely to raise in Court. He (the plaintiff) might very well know, in his own mind what was the position of the proposed defendant when he, the plaintiff, has to choose the forum. For instance, a tenant might have been dispossessed by a person claiming to be his usufructuary mortgagee (who has paid his mortgage money) and not claiming through the landholder. Why should the plaintiff be compelled to allege falsely that the defendant is claiming through the landholder and to go to the revenue Court, where the defendant may deny the allegation? In such a case, if the plaintiff comes to a civil Court with true allegations, is he to be sent to the revenue Court merely because the defendant chooses now to plead that he is a tenant?

11. The plaintiff chooses his forum and files his suit. If he establishes the correctness, of his facts, he will get his relief from the forum chosen. If as happened in the Patna case quoted above, he frames his suit in a manner not warranted by the facts, and goes for his relief to a Court which cannot grant him relief, on the true facts, he will have his suit dismissed. Then there will be no question of returning the plaint for presentation to the proper Court, for the plaint, as framed, would not justify the other kind of Court to grant him the relief. But we are told that although the plaintiff has chosen his forum rightly, the defendant, if he so wishes, may, merely by saying something in his defense-something the correctness of which he need not take the trouble to establish-oust the jurisdiction of the Court and compel the plaintiff to go to another Court.

12. Where the plaintiff chooses his forum and the defendant denies the jurisdiction of the Court to hear the case two questions arise, viz.:

1. Whether, on the allegations made in the plaint,, the suit is cognizable by the Court?

and2. Whether, on the true state of facts, on facts alleged and established by the defendant, the suit should be tried by the Court?

13. Where it is found that, on the allegations made in the plaint, the suit is cognizable by the Court, it will have to proceed to find whether the facts alleged in the plaint are established or not. If it is found, on a trial on the merits so far as this issue of jurisdiction goes, that the facts alleged by the plaintiff are not true and the facts alleged by the defendant are true, and that the case is not cognizable by the Court, there will be two kinds of orders to be passed; If the jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be returned for presentation to the proper Court. If, on the other hand, it is found that, having regard to the nature of the suit, it is not cognizable by the class of the Court to which the Court belongs, the plaintiff's suit will have to be dismissed in its entirety. The reason will be that on the unamended plaint the revenue Court would have no jurisdiction to hear this suit. Of course, if the Court allows the plaintiff even at a late stage of the case, to amend his plaint so as to convert the suit into one against a person claiming as a landholder or through a landholder, the plaint can be returned for presentation to the revenue Court.

14. It has been suggested that Section 99 introduces a change in the law and in the procedure, and it directs that the plaint shall be returned for presentation to the revenue Court, if, on the defense set up in the suit itself, it be found that the suit would be cognizable by the revenue Court. We have already examined the language of Section 99 and have found that such could not be the import of the words used.

15. Let us now consider the plaintiff's allegations. The plaintiff's suit is that the defendants are trespassers. Her husband died separate, 10 years ago. If her husband was not separate from his brothers and nephews, the plaintiff's suit would be dismissed by the civil Court, according to our view of the case. On the other hand, if the plaintiff succeeds in proving that her husband was a separated member of the family and had a separate holding and his widow, the plaintiff, succeeded him 10 years ago and has been holding it on for the last 10 years as the tenant and the defendants are really trespassers, the civil Court would grant her a decree. If the mere filing of the written statement on behalf of the defense, to the effect that, the defendants and not the plaintiff is the tenant, will result in the plaint being ordered to be presented to the revenue Court, what would happen is this: Suppose, the plaintiff goes to the revenue Courts and, there, she establishes that her husband died 10 years ago as a separate member of the family, that she succeeded to the tenancy, that she was recognized as the tenant by zamindars and that she was without the least justification dispossessed from her holding by the defendants, who have no title to the property, a year and a half before the institution of the suit. Will the revenue Court be in a position to decree the suit? There can only be one answer and that is in the negative. If the revenue Court grants a decree for ejectment, it will assume jurisdiction which it does not ordinarily possess, viz; one to eject trespassers. There may be many reasons why a plaintiff prefers to sue a trespasser in a civil suit rather than unnecessarily admit that he is claiming through the landholder and sue in a revenue Court. For instance he can get mesne profits for

three years with interest through the civil Court, whereas he can only get compensation for six months in a revenue Court. Further, the question of limitation may come in many cases, viz., where a suit has been instituted more than six months after the accrual of the cause of action. The limitation for a suit instituted under Section 99, Agra Tenancy Act of 1926, is six months: see Sch. 4, group B, Clause 12. It has been urged that the plaintiff in such a case, would be entitled to the application of Section 14, Lim. Act and also of Section 231 of the Act, which extends Section 5, Lim. Act, to suits. Section 14, Lim. Act, will be of no use to the plaintiff, if he happened to come to Court more than six months after the accrual of his cause of action. If Section 231 be applied the delay may be condoned, but then the plaintiff will have no absolute right to the application in his favor of Section 231, Agra Tenancy Act of 1926.. Section 5, Lim. Act, lays down:

An appeal or application (and by Section 231, Tenancy Act, a suit) may be admitted when the appellent (or the plaintiff) satisfies the Court that he had sufficient cause for not preferring the appeal (or filing his suit)....

16. It will be seen that the plaintiff, in any civil Court, filing his suit within the ordinary 12 years' period of limitation for ejecting a trespasser, is under no obligation to satisfy the Court that he had sufficient cause for not filing his suit earlier. All that he need prove is that he came within 12 years of the accrual of his cause of action. Supposing that the plaintiff is unable to give to the revenue Court any satisfactory explanation beyond this, that he knew that he had to sue a trespasser and he had 12 years within which to sue, Will that explanation satisfy the Court, in every case? If it does, what is the good of having a rule which requires the Court to be satisfied at all? The rule of law as enacted under Section 231, Agra Tenancy Act, of 1926 will be reduced to an absurdity. This would be, therefore, a very good ground for supposing that the interpretation sought to be put on behalf of the defendants is not sound.

17. There are a good many other considerations why the interpretation sought to be put on Section 99 on behalf of the defendants should not be accepted, where it is intended that, on a defendant raising a certain plea, a particular procedure has to be followed, the Tenancy Act has expressly used the word "to plead." In Section 273 it is provided that in any suit instituted in a civil Court, relating to an agricultural holding, when the defendant "pleads" that he holds such land as the plaintiff's tenant, the Court is to frame an issue and send the record to the proper revenue Court for decision of that issue. The legislature, therefore, being aware of the significance of the word, "to plead" would be expected to use the same word in Section 99, if it meant to convey the same meaning. There would have been, no difficulty for the legislature in saying, for example:

Where in a suit by a, tenant against any person, 'the defendant pleads that he is the plaintiff's landholder, or that he claims through the plaintiff's landholder, an issue shall be, framed and referred to the revenue Court, or the plaint itself shall be returned for

presentation to the revenue Court.

18. The legislature not having expressed itself so clearly, it would not be right to accept the defendant's interpretation of 8.99. Again, the proviso in Section 99 itself goes to show that it contemplates a case where a tenant sues the actual landlord and not merely a trespasser who professes (but fails to prove) that he is the landlord.

19. Looked at from any point of view, the interpretation sought to be put by the defendants is, in our opinion, inadmissible. We need not at all mention the worry and trouble to which an honest plaintiff would be put, if we accept the principle that although he, the plaintiff, has done his best to choose a forum in which he has a right to institute a suit on the allegations made by him, yet,, on a mere statement by the defendant of certain facts, without any enquiry whether the defendant's statement of facts or the plaintiff's statement of facts is the correct one, the plaintiff is to be ordered to go to another Court, engage another set of counsel and fight out his suit in the second Court. We do not deny that if the legislature chose that such far reaching consequences should happen, it could legislate to that effect, but the question is:

Does the language of Section 99, Ten. Act, 1926. warrant the inference of such an intention on the part of the legislature?

20. Under the law as it stood before the Agra Tenancy Act of 1926 came into force, the civil Court admittedly had jurisdiction to entertain a suit against a trespasser, and the jurisdiction of the Court was primarily determined by the allegations in the plaint and not by those in the written statement. We do not think that the legislature could have intended to alter the law in both respects by the use of language which is capable of two interpretations; and even if we were to allow that both interpretations are possible, we should have to hold that the one which leaves the law unchanged is to be preferred to the one which drastically alters it. It has been said that the object of the legislature was to attract to the revenue Court all suits in which any question of tenancy rights is involved. We may accept this; but we may also insist that the question must be a real one, and not merely a litigious allegation. If there is a real question, the plaintiff will be aware of it; and he will either set it out in his plaint and have it tried by the revenue Court, or he will conceal it, and find that his suit is dismissed by the civil Court.

21. We are of opinion that the jurisdiction of the Court is to be initially determined by the allegations made in the plaint and the allegations made in the written statement cannot oust that jurisdiction unless and until the allegations of fact have been gone into, tried judicially and found to be true, and the plaintiff's allegations have been found to be false. We would direct the Munsif in this particular case to proceed with the suit.

Boys, J.

22. This case has been referred to a Bench of five Judges to consider the effect of Section 99, New Agra Tenancy Act 3 of 1926. Plaintiff sued in the civil Court alleging that her deceased husband had separated from the remainder of the family 25 years prior to the suit, that she had been for the past ten years since his death in possession and occupation of certain agricultural tenancies, and that the defendant had ousted her. She asked for possession, mesne profits and an injunction. The defendants in their written statement alleged that the family was joint, denied that the plaintiff had ever been in possession and alleged their own possession and cultivation of the plots in suit. Though the actual pleadings may have been, as is usual, loosely worded it is common ground that the correct interpretation is that the plaintiff was claiming as a tenant in possession who had been ejected by the trespasser defendants, while the defendants replied that it was they and not the plaintiff who were the tenants, and that they had always been in possession.

23. The learned Munsif was in doubt whether in face of this plea of the defendants and Section 99, a civil Court had jurisdiction to entertain the suit, and he accordingly referred to this Court under Section 267, Agra Tenancy Act 3 of 1926, the question whether upon seeing the plea of the defendants his proper course was to return the plaint forthwith or whether he should proceed to decide an issue as to the fact of defendants' tenancy.

24. The case came before the present Acting Chief Justice and Pullan, J., and as they "entertained some doubts" as to the correctness of a previous decision of this Court *Nandan v. Muhomad Ali* (1), the matter was referred to the present Bench. In the case quoted it was held by Bennett, J., and myself that in such a case it was the revenue Courts that alone had jurisdiction.

25. Admittedly the ordinary rule is that the jurisdiction of the Court to entertain a suit will primarily be determined on the basis of the plaint. The question here is what is the effect of Clause 1, Section 99; and more particularly of para. (b).

26. The Munsif has framed the following; two questions for expression of an opinion by this Court:

(1) Where a plaintiff alleging himself to be a tenant sues a defendant treating him as a trespasser, for possession and compensation regard in a holding or part thereof, and the defendant pleads tenancy, then, having regard to Sections 99 and 230, Act 3 of 1926, is the suit maintainable in the civil Court?

(2) Where a tenant on being dispossessed from his holding or part thereof, sues a parson for compensation and possession, and also asks for an injunction to restrain the defendant from doing any act prejudicial to the plaintiff's interest, what is the effect upon the jurisdiction by joining the relief of injunction with? that of possession and compensation; is the suit cognizable by the civil or the revenue Court?

27. I proceed to discuss the first question.

28. First, then, what is the meaning of the word "claiming" in the phrase "claiming: through such landholder or person?"

29. Does the word "claiming" mean "asserting a right" or does it mean:

asserting a right which must be taken to exist, either because it has already been proved prior to the suit or because it is admitted or because it has been the subject of inquiry, i.e., of an issue in the suit itself, and found to exist?

30. If it means merely "asserting a right" which may or may not exist, then the section creates an exception to the general principle (that the allegations to be found in the plaint constitute the primary test of jurisdiction and allegations by the defendant will not be sufficient until established to oust jurisdiction) and as soon as the civil Court finds the assertion of the right to be made, even though such assertion is by the defendant, it must return the plaint for presentation to the revenue Court.

31. If it means the "asserting of a right which must be taken to exist," then, if the right has not been established prior to the suit or is not admitted, the civil Court must try the preliminary issue as to its existence and, if it finds it to exist, then and then only return the plaint for presentation to the revenue Court or dismiss the suit, which of these two latter steps would be the correct one being a question we are not called upon in this reference to determine. We have only to consider whether it should forthwith refuse to proceed immediately on the assertion being made by the defendant or whether it must be satisfied that the assertion is truly founded.

32. I can find no adequate reason for giving to the word "claiming" when applied to persons, any other than its ordinary meaning, the assertion of a right without any implication as to whether the right is well founded or baseless. There are no doubt cases in which the word "claims" is used as meaning "has right to," such as "your son claims," i.e. has a claim on or a right to your attention, but there can be no doubt that where a man says "I claim that property" he ordinarily means "I assert my right to that property."

33. It is suggested that the acceptance of the view that mere assertion by the defendant of a right will exclude the jurisdiction of the civil Court is to graft an exception on to the ordinary rule that the question of jurisdiction must primarily be determined by the allegations in the plaint without reference to the defendants' pleas. Granted that this is so, I am of opinion that there is nothing deterrent in this consideration. One object of the alterations made in this section from the form it took in the Act of 1901 was to include within its scope ejection by a tenant and this has been expressly done. If that had been the sole object of amendment, it would have sufficed to say:

by (a) his landholder (b) by any parson holding through such landholder whether as tenant

or otherwise.

34. But one general purpose of the new Act was, amongst others, to endeavor to settle vexed questions of jurisdiction. How was this to be effected?

35. It necessarily happens that among all the variant features in different cases a particular fact can be selected in one case which is more suitable for trial in a civil Court; a particular fact in another case or even in the same case more suitable for trial in a "revenue Court. Upon the basis of such isolated facts no guiding principle could be founded.

36. A dividing line, however, might well be drawn by bringing within the jurisdiction of the revenue Court all questions where any contention as to tenancy rights was involved whether or no any particular other issue might, separately regarded, be more suitable for determination by a civil Court.

37. Already a case where the plaintiff disclosed that tenant rights were in dispute was by virtue of the first part of the amendment within the jurisdiction of the revenue Courts. There is nothing strange in the legislature having in accordance with its general purpose, held that it was just as desirable to confine to the revenue Courts cases where a dispute as to tenant rights was disclosed by the defendant and to have realized that here, in disclosure by either party of a dispute as to tenant rights, was a feature on which could be based a general principle. This principle was then embodied by the further amending of the section to include all, cases where the allegation of dispute as to tenant rights was made by the defendant as well as when made by the plaintiff. This then is my view of the purport of the words in question and the purpose with which they were deliberately inserted.

38. It is suggested that the word "pleads" is used in Section 173, and that if the legislature meant by "claiming" only "asserting a right" it could have used instead of the word "claiming" the phrase "pleading that he is entitled." Such a "phrase manifestly multiplies words unnecessarily. But I do not think that in any case much weight should be allowed to this suggestion in view of the fact that the new Act is an Act amending the old and it is obvious that in amending a particular section it is not possible, whatever may be desirable theoretically, for the draftsman to have always in mind the exact word that has been used elsewhere in the Act to express the same idea.

39. But there is yet a further consideration which destroy the force of this suggestion. To have used the phrase "pleading that he is entitled" would not have covered a case where the plaintiff himself disclosed, before the defendant was even called upon to file a written statement, i.e., to plead that the defendant had at the time of the ejection "claimed" to be a tenant though the plaintiff had alleged him to be a trespasser, and yet it would be consistent with the general purpose of the Act already nosed to include such a case There is affirmative ground therefore for

deliberately using the word "claiming".

40. Next it has been suggested that it would be strange to hold that a defendant by merely asserting a right could by force of that assertion only, without any enquiry into it and proof of its correctness oust the jurisdiction of the civil Court. For two reasons again I think there is no force in this suggestion. Admittedly the ordinary rule is that the question of jurisdiction is primarily determined by the pleas in plaint. But this is a rule of convenience, and there is no radical reason why the plaintiff's plea should be treated as any more effective than the defendant's plea.

41. In the present case there is a definite object to be attained as I have already shown in this judgment, by giving equal effect to the defendant's plea. But further is this suggestion weakened by a reference to the very section to which reference has already been made, Section 273. The simple plea of the defendant that he is tenant of the plaintiff is thereby made sufficient to oust the jurisdiction of the civil Court to try the particular issue of tenancy. There is nothing strange, therefore, in allowing in an appropriate case the plea of the defendant to oust the jurisdiction of Court altogether.

42. I come now to the plaint, which was argued with great vehemence, and to which it was claimed throughout the hearing that great force must be allowed. This concerns a question of limitation. It was suggested that a plaintiff, who believed a defendant to be a trespasser, was entitled to twelve years within which to bring his suit that it would be possible if that suit were brought after the lapse of six months for a defendant who had not the least justification for setting up a question of tenancy to raise the pleas referred to in Section 99; that the Court would there by be compelled to send the plaintiff to the revenue Court and that he would there be met by a plea of limitation which the Court would have to accept without any enquiry into the truth or falsity of the defendant's plea.

43. This if it is a correct view of the consequences that would follow, is indeed a grave consideration and while it would not justify a wrong interpretation of the law as it stands it would call for the instant attention of the legislature.

44. When at the commencement of the hearing I suggested the possibility of the plaintiff taking advantage of Section 14, Lira. Act, it was replied that Section 14, Lim. Act, did not apply to proceedings in a revenue Court and the argument proceeded to a close on this assumption. At the close of the argument however I invited support for the suggestion that Section 14 was inapplicable to revenue Courts and asked to be referred to any case in which the subject had been considered. The most that could be said was a reference to Section 168. Act 2 of 1901. It is manifest that did not prohibit the application of Section 14.

45. This led to a reference to Section 231 of the present Act 3 of 1926. The only suggested justification it is not really a justification for reading that section as excluding Section 14 is the fact that it expressly refers to Section 5, Lim. Act, and the suggestion apparently is that because

there is specific application of Section 5, therefore, it must be assumed that Section 14 does not apply. But this is to omit to note that Section 231 does not merely apply Section 5, Lim. Act but specifically extends the scope of it. Section 5, Lim. Act only applies to appeals and certain applications. It does not apply to suits. Section 235 expressly extends the scope of Section 5, Lim. Act to all suits and other proceedings under the Tenancy Act. There is therefore special reason for the mention of Section 5, and no inference from the special mention of that section can even be suggested that such special mention would imply the non-applicability of other sections. The preamble to the Limitation Act may also be considered. I am of opinion, therefore, and nothing is shown to the contrary, that the operative sections of the Limitation Act apply to all suits whether in the civil or the revenue Courts, while of course the schedules only refer to the particular matters there dealt with, and for the limitation affecting particular matters with which the Tenancy Act is concerned we must look to the Tenancy Act for the period of limitation.

46. I am, therefore, of opinion that there is no reason for not giving to the word "claiming" its ordinary meaning, and I would therefore answer the question propounded by the learned Munsiff in the affirmative directing him that his proper course is to return the plaint with a direction to the plaintiff to file it, if fee so wishes, in the appropriate revenue Court with such prayer for amendment or with a copy of the order of the Munsiff and an application under Section 14, Lim. Act, as he may see fit.

King, J. –

47. This was a suit for possession of an agricultural holding. The plaintiff alleged that she was the sole tenant of the holding and that the defendants, who were mere trespassers, had forcibly dispossessed her. She sued in the civil Court for possession, compensation and an injunction.

48. The defendants pleaded that they were in rightful possession of the holding as tenants and that the civil Court had no jurisdiction to try the suit. The first question for our determination is whether the jurisdiction of the civil Court is barred by Section 99 read with Section 230. Agra Tenancy Act, 1926.

49. The question turns upon the interpretation of Section 99(1) which runs as follows (omitting words unnecessary for the purpose of this case:

Any tenant ejected from his holding, otherwise than in accordance with the provisions of this Act, by (a) his landholder or any person claiming as landholder to have a right to eject him, or (b) any person claiming through such landholder or person, whether as tenant or otherwise may sue the person so ejecting him etc.

50. The main controversy centers round the meaning which should be given to the word "claiming" in the expression claiming through such landholder etc." in Section 99(1)(b). Now the

word "claiming" is not a technical expression when it occurs in a United Provinces Act and must therefore be given its popular, or plain and ordinary, meaning. The ordinary meaning of "claiming" in this context would be "asserting a title." It does not carry with it any implication that the assertion must be true. A claim may be true or false. It is hardly necessary to appeal to a dictionary on this point. I take it then that the word "claiming" in the expression under consideration has its ordinary or popular meaning of "assertion of a title" whether the assertion be true or false.

51. The next question is whether a defendant who raises a plea of tenancy in his written statement is a "person claiming through such landholder or person as tenant" within the meaning of Section 99(1)(b). In my opinion the answer is clearly in the affirmative. The word "claiming" is wide enough to cover a claim made in a written statement. Indeed it would ordinarily be the written statement to which we should look for a statement of the defendant's claim.

52. In the referring order the learned Judges did not suggest that the word "claiming" had any unusual meaning, but suggested that the claim to tenancy should have been put forward at the time of ejection, and if the defendant did not put forward his claim at the time then he could not be allowed to oust the jurisdiction of the civil Court by a claim made in his pleadings. I am unable to accept this view. In the first place I see no justification for cutting down the meaning of the word "claiming" to "claiming at the time of ejection." In the second place parties do not usually make any clear statement of the grounds of their respective claims (so far as my experience goes) at the time of wrongful ejection. Let us take a typical case. The defendant goes and starts cutting the crops or ploughing the land, as the case may be. The plaintiff hears of it and rushes to the spot, probably armed with a lathi. A vulgar brawl ensues, the conversation on each side consisting mainly of abuse and threats. The gist of the defendant's remarks could probably be summed up as follows: "This field is mine, you clear out." I do not believe the legislature requires the Court to ascertain exactly what the defendant said in such circumstances and whether his statements amounted to "claiming through such landholder or person as tenant." It would be hardly possible to get satisfactory evidence of the defendant's statements on such an occasion when the parties are quarrelling if not fighting. In my opinion, therefore, a defendant who sets up a claim to tenant's rights in his written statement is a person "claiming through such landholder as tenant" within the meaning of Section 99(1)(b).

53. It has been suggested that the word "claiming" in Clauses (a) and (b), Section 99(1) cannot possibly mean "pleading in the defense of the suit brought against him that he is claiming." This view apparently implies that "claiming" does not even include "asserting a title in the form of a plea." I have already given reasons for holding that the latter meaning is included in the word "claiming" although that word would also include asserting a title on previous occasions, if such assertion is admitted or can be proved. But if this interpretation of the word "claiming" is wrong, the question arises what is the correct interpretation? No alternative has been clearly put forward.

54. It is contended that the defendant's plea of tenancy rights cannot oust the jurisdiction of the civil Court unless the defendant's allegations of fact have been tried judicially and found to be true, and the plaintiff's allegations have been found to be false. In other words, the defendant is not to be considered to be "claiming" tenancy rights unless his allegations are found to be true. This implies that the word "claiming" in Section 99(1)(b) should be interpreted as meaning not "asserting a title" but having a title." In my opinion this is putting a very strained interpretation on the word. It is not in accordance with its plain and ordinary meaning. Moreover, we have to consider the meaning of the same word in Section 99(1)(a) "claiming as landholder." In my opinion it is quite impossible to construe this expression as equivalent to "having title as landholder" because a person "claiming as landholder" is expressly contrasted with "his landholder." I think "claiming" in Clause (a) can only mean "asserting a title" as landholder and when we find the same word "claiming" used in the very next clause of the same subsection it would be contrary to all rules of statutory interpretation if we did not give the same meaning to the same word in each case.

55. Moreover, a distinction is sought to be made between an assertion of title mentioned in the plaint and an assertion of title mentioned in the written statement. It is conceded that if the plaint discloses the fact that the defendant asserts tenancy rights then he is "claiming through such landholder as tenant" within the meaning of Section 99(1)(b) whether his assertion be true or false and the jurisdiction of the civil Court is ousted. If, on the other hand, the assertion of the defendant's title is found only in the written statement, then it is contended that he cannot be held to be "claiming through such landholder as tenant" unless and until the assertion is proved to be true. I find no justification for giving such different interpretations to the word "claiming" with reference to assertions of title mentioned in the plaint and in the written statement respectively.

56. I must now consider certain arguments advanced in support of the view that the defendant's plea of tenancy rights will not oust the jurisdiction of the civil Court. It is urged that the general rule of law is that the question of jurisdiction depends initially on the allegations made in the plaint. I grant this. The civil Court had jurisdiction to take cognizance of the suit as framed because it did not disclose the existence of any claim to tenancy rights on the part of the defendant.

57. Then it is said that if the defendant can oust the jurisdiction of the civil Court by a mere claim of tenancy, in the form of a plea in his written statement, that the plaintiff's position would be precarious and he might be forced to change his forum simply by the defendant's false or frivolous plea. This objection is perfectly sound, but I do not think it is so weighty as to justify us in holding that the legislature could not have contemplated a procedure involving such consequences. Take an extreme case. A tenant, P is wrongfully dispossessed by a rank trespasser D. P takes pains to ascertain that D had no right, and does not even profess to have any right, as a tenant. P accordingly files his suit in the civil Court treating D as a trespasser. D in his written statement raises a false and frivolous claim to tenancy. This ousts; the jurisdiction of the civil

Court which thereupon permits P to amend his plaint by adding a paragraph to the effect that as D claims tenancy rights (although quite falsely) the suit is triable by the revenue Court, and returns the plaint to P for presentation to the revenue Court. This is no doubt troublesome and annoying but, after all, causes little harm the revenue Court can be trusted to dispose of D's false and frivolous claim at least as expeditiously as the civil Court could do.

58. Granting that the law, as I interpret it, involves some disadvantages, let us see whether the contrary view does not involve even greater disadvantages. According to that view the plaintiff is given an unfettered discretion not merely to choose his forum initially but to have his suit tried on its merits in whichever forum he wishes. The plaintiff is expected to consider the strength of the claim to tenancy rights which may be set up by his rival, the defendant. If the plaintiff considers his rival's claim to be merely a litigious allegation then he will say nothing about it in his plaint and will have the suit tried by the civil Court on the allegation that the defendant is a mere trespasser. If, on the other hand, the plaintiff thinks that his rival has a good claim then he may mention it in his plaint, if he thinks fit, and thus have his suit tried by the revenue Court. Clearly then the plaintiff is to have absolute discretion whether he will have the suit tried by the civil Court or by the revenue Court. He can compel the civil Court to try the issue of tenancy by merely omitting to state in the plaint that the defendant has a claim to tenancy rights. He is in no way bound to make such a statement in his plaint, nor is he bound to deny that the defendant claims tenancy rights; so he has a free hand to have his suit tried in whichever forum he wishes. Moreover, the plaintiff stands to lose nothing by selecting the civil Court. If the plaintiff fails to prove his allegations then the suit will be dismissed, whether it is tried by the civil or by the revenue Court, so the plaintiff is likely to select the civil Court.

59. If it is considered objectionable to let the defendant oust the jurisdiction of the civil Court by a mere plea of tenancy rights, then I think it is at least equally objectionable to give the plaintiff absolute discretion in the choice of the forum, even in a case when he knows well not merely that the defendant has a claim to tenancy rights but that he has a perfectly bona fide and strong claim. It also seems to me objectionable to give the plaintiff the option of a period of limitation for his suit extending to 12 years when the intention of the legislature is that suits between rival tenants for wrongful ejection should be brought within six months from the date of wrongful dispossession.

60. Another and more serious consequence of accepting that view is that the apparent intention of the legislature, to reserve questions of tenancy rights for the decision of the revenue Courts, will be defeated. I think it is clear that the legislature did intend that questions of tenancy rights should be determined, exclusively by the revenue Courts. Section 79 Agra Tenancy Act 1901, gave the revenue Courts exclusive jurisdiction in suits for wrongful ejection by a tenant against his landholder only. Suits between rival tenants (e.g. suits like the present one in which each party claims mutually exclusive rights of tenancy) were therefore triable by the civil Courts which had to determine which party was entitled to possession as tenant. Evidently the legislature

considered this position unsatisfactory, and by the enactment of the present Section 99, the classes of suits for wrongful ejectment triable exclusively by the revenue Courts, have been greatly expanded. Section 99(1)(b) was intended in my opinion to bring within the exclusive jurisdiction of the revenue Courts suits between rival tenants, including suits (such as the present one) where each party claims mutually exclusive tenancy rights. When the main issue for decision is whether the plaintiff or the defendant is entitled to possession as tenant then it is an issue for the revenue Court to decide. I understand this to be the principle underlying Section 99(1)(b). This view finds strong support from the provisions of Section 273, new Tenancy Act. That, section shows that even if a suit relating to an agricultural holding is in other respects triable by a civil Court, nevertheless, if an issue of tenancy is raised, the civil Court has to submit the record to the revenue Court for deciding that issue. This provision is only intelligible upon the hypothesis that the policy of the legislature was to reserve the decision of an issue of tenancy to the revenue Court. It would be very anomalous if the civil Court is prohibited from trying an issue of tenancy under Section 273 but is permitted to try and decide an issue of tenancy in a suit between rival tenants.

61. It has been suggested that if Section 99 is susceptible of two interpretations then we should prefer the interpretation which leaves the law unchanged to the one which drastically alters it. I do not think that there can be any presumption in respect of Section 99 that the legislature intended to leave the law unchanged. On the contrary, we find that the legislature has deliberately made drastic amendment in that section and it is safe to assume that the intention was to change the law drastically. It would be most astonishing if the result of the amendments is to leave the law unchanged so that suits between rival tenants are still to be tried by, the civil Courts, if the plaintiff so desires. If the plaintiff fails to institute his suit within six months from the date of wrongful dispossession he will obviously prefer to have his suit tried by the civil Court.

62. It is also urged that it would be very anomalous if the defendant were empowered to oust the jurisdiction of the civil Court by a mere plea into the truth of which the civil Court could not enquire. Ordinarily, no doubt, when a defendant raises a plea of want of jurisdiction he does so by making allegations of fact which have to be gone into and it would be contrary to the ordinary procedure if the defendant could oust the jurisdiction of the Court by merely making a claim without proving the facts upon which it is based. I am, however, unable to interpret the language of the section except in the sense already explained above and I must conclude that the legislature deliberately intended to introduce an exceptional procedure. The dominating principle seems to have been to reserve questions of tenancy rights for the exclusive jurisdiction of the revenue Courts. As soon as the civil Court finds that an issue of tenancy has been raised then it should not decide that issue, or make any enquiry into its merits, but simply return the plaint (after permitting necessary amendment) to the revenue Court for deciding the issue of tenancy. There are other indications in the Act that the legislature really did intend questions of jurisdiction to be determined simply by the defendant's plea. Section 273 clearly shows that a mere plea of tenancy made by the defendant in his written statement is enough to oust the

jurisdiction of the civil Court to decide the issue raised by that plea, In the converse case, to which Section 271 is applicable, we find that a mere plea of proprietary right made by a defendant compels the revenue Court to frame an issue on the question of proprietary right and to submit the record to the civil Court for the decision of that issue. When an issue of tenancy rights is raised in a suit for wrongful ejection by a tenant against a rival tenant then the issue is so vital that the civil Court does not merely frame the issue for the decision of the revenue Court, but has no jurisdiction to proceed further with the suit. That is the explanation of the provisions of Section 99(1)(b) as I understand them.

63. But, it is argued, the language of Section 273 and Section 99(I)(b) is different. In Section 273 we find express provision for an issue of tenancy raised by the defendant's plea. In Section 99(1)(b) instead of the word "plea" we find the word "claiming" and the very fact that the word "plea" is not used shows that the claim did not include an assertion of title set forth in the plea. I do not find much force in this argument. The word "claiming" seems to me wide enough to include setting up a claim in the form of a plea in a written statement. I have already tried to show that it would seldom be possible to ascertain the exact nature of the defendant's claim, if any, until he formulates it in his written statement. "Claiming" is, however, wider than claiming in the form of a plea. If the plaintiff admitted in his plaint that the defendant claimed tenancy rights there would be no need for the civil Court to require the defendant to plead, since the civil Court's jurisdiction would admittedly be ousted on the allegations in the plaint alone. So there is a reason, as observed by Boys, J. for using the word "claiming" in preference to "pleading a title" or words to that effect.

64. The next argument advanced in support of the contrary view is as follows: It is said that if the defendant's claim to tenancy made in his written statement, results in the suit being tried by the revenue Court, and if it is there established that the defendant is a mere trespasser and has no tenancy rights, then the revenue Court would not be competent to decree the suit because a revenue Court cannot effect a trespasser.

65. This argument seems to involve a logical fallacy. If the revenue Court tries the suit then it will do so on the hypothesis (which I believe to be correct) that it has exclusive jurisdiction to try a suit for wrongful ejection where the defendant rightly or wrongly claims tenancy rights. If the Court finds the defendant's claim to be false I see no reason why the Court should not decree the suit. If the Court has jurisdiction to try the suit it has jurisdiction to pass the decree. Ex hypothesis it is the defendant's claim to tenancy rights which give exclusive jurisdiction to the revenue Court, whether the claim be true or false. Moreover the acceptance of this argument involves the surprising result that the plaintiff in a Suit like the present one, cannot possibly be successful in the revenue Court. If the plaintiff proves his case up to the hilt then his suit will be dismissed on the ground that the defendant is a trespasser who cannot be ejected by the revenue Court. If on the other hand, the defendant establishes his claim to possession as a tenant then the suit will be dismissed upon the merits. There is no alternative when each party claims mutually

exclusive tenancy rights. The plaintiff, therefore, is bound to lose, whatever the finding may be. I find it impossible to believe that the legislature intended to put the plaintiff in such a hopeless position. It is also worth noting that it is wrong to assert, as a general proposition that the revenue Court has no jurisdiction to eject trespassers. Section 44 expressly empowers the revenue Court to eject a trespasser on the suit of the landholder. There is, therefore, nothing strange or anomalous in the view that the revenue Court, in trying a suit under Section 99(1)(b), can eject a defendant who claims tenancy rights but is proved to be a trespasser.

66. A further argument is advanced on the subject of limitation. The learned Munsiff who made the reference was much influenced by the supposed hardship caused to the plaintiff if he returned the plaint for presentation to the revenue Court. He thought that 8. 14, Lim. Act, (which lays down that the time taken by the plaintiff in bona fide prosecution of the suit before another Court shall be excluded from the period of limitation) does not apply to the procedure of revenue Courts and therefore the plaintiff's suit would be time barred in the revenue Court and she would be left without any remedy. Prima facie he is mistaken in supposing that Section 14 would not apply to suits under the Tenancy Act. Under Section 29(2)(a), Lim. Act, Section 14 of that Act would apply to suits under the Tenancy Act, if not expressly excluded. There is no express exclusion. Boys, J. has clearly shown that Section 231, Tenancy Act cannot possibly be taken as excluding Section 14, Lim. Act, even by implication. The present suit was instituted within six months of the actual of the cause of action, so the plaintiff would not be faced with any difficulty due to limitation if her plaint were returned (after amendment) for presentation to the revenue Court. The argument from hardship due to limitation breaks down therefore completely.

67. A further argument is based on the proviso to Section 99(1). It is said that the proviso shows that the section contemplates a case where a tenant sues the actual landlord and not merely a trespasser who professes, but fails to prove that he is the landlord. I must frankly confess that I am unable to appreciate the force of this argument. Undoubtedly the section does contemplate a suit against the actual landholder, but it also undoubtedly contemplates a suit against a person claiming as landholder. I see nothing in the proviso to show that this claim must be true. Moreover, it is conceded that if the defendant's claim is mentioned in the plaint then it is immaterial, for the purpose of jurisdiction,, whether the claim is true or false. I remain unconvinced therefore by the arguments against the interpretation which I would put upon Section 99. In my opinion the decision of a Division Bench of this Court in *Nandan Mallah v. Muhammad Ali*⁴ which is on all fours with this case, was perfectly correct.

68. On the second question, whether the question of jurisdiction is affected by adding a prayer for an injunction to the prayers for possession and compensation we are fortunately all in agreement. In my opinion the revenue Court can give adequate relief by decreeing possession and compensation, so the jurisdiction of the revenue Court is not affected by the prayer for an injunction. This is my answer to the second question.

69. I would answer the first question as in the terms proposed by Boys, J.

70. The answer to the first question in the affirmative.

71. The answer to the second question is that if the suit substantially falls under Section 99, the joining of a relief for an injunction would make no difference and the suit would be cognizable by the revenue Court.

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⁴1929 A.L.J 904