Allahabad High Court
Gokaran Singh vs Ganga Singh on 12 August, 1919
Equivalent citations: 52 Ind Cas 779
Author: P Banerji
Bench: P Banerji, Rafique, Piggott
JUDGMENT P.C. Banerji, J.

1. The principal question which arises in this appeal is whether the Court below had jurisdiction to entertain the appeal as preferred to it from the decision of the Court of first instance. The facts of the case are these: The plaintiff Ganga Singh alleged that under a perfect partition which took place between him and the defendant, the disputed plots of land were allotted to his share inas-much as the defendant held more wand khudkasht lands than he was entitled to, that after the partition the defendant forcibly took possession of the disputed lands and that in view of the provisions of Section 34 of the Agra Tenancy Act the plaintiff was entitled to treat the defendant as his tenant. Treating the defendant as such, the plaintiff brought the present suit in the Revenue Court to eject the defendant from the disputed plots of land, the defendant being, according to him, a non-occupancy tenant. The defendant, on the other hand, contended that he had a right of occupancy. He also raised the plea, which was the first of the additional pleas put forward by him that "having regard to the plaintiff 's own allegations, the suit was not cognizable by the Revenue Court, and on such a ground his suit should be dismissed," An issue' was framed by the Court of first instance on the question of jurisdiction and further issues were raised on the merits. The Court of first instance tried the other points in the case, and being of opinion that the defendant was a tenant with rights of occupancy held that the plaintiff was not entitled to eject him. The Court proceeded to observe that in this view the suit was cognizable by the Revenue Court, The plaintiff preferred an appeal from the decision of the Court of first instance to the Commissioner. The Commissioner was of opinion that the appeal lay to the District Judge in view of the provisions of Section 177 (f) of the Tenancy Act and returned the memorandum of appeal to the plaintiff for presentation to the proper Court. The memorandum of appeal was then presented by him in the Court of the District Judge. The District Judge entertained the appeal and on the merits held that having regard to the partition proceedings it was no longer open to the defendant to set up his alleged right of occupancy. The Court decreed the claim. The decree of that Court has been affirmed by a learned Judge of this Court in second appeal and the present appeal has been preferred by the defendant under the Letters Patent.

2. It is contended before us on his behalf that no appeal lay to the District Judge. Although he himself raised the plea that the Revenue Court had no jurisdiction, he urges that this was a futile plea, that in reality there was no question of jurisdiction which could 'be decided by the Court of first instance and that consequently no appeal lay to the District Judge. Three oases have been cited to us. The first in point of time is the case of Deo Narain Singh v. Sitla Baksh Singh 47 Ind. Cas. 891 : 40 A. 177 : 16 A.L.J. 590. In that case it was observed by the learned Judges that it would be reducing matters to an absolute absurdity to hold that the defendants in a revenue suit could, by formally raising an absolutely untenable plea of jurisdiction, take every case from the Revenue Court to the Civil Court." And 'the learned Judges held that where a plea of jurisdiction was raised which could not properly be raised, an appeal did not lie to the District Judge. This view was not followed in the case of Damodar Das v. Jhaoo Singh 39 Ind. Cas. 87 : 15 A.L.J. 319. The third case which we

have been referred is the case of Umrai Singh v. Ewaz Singh 49 Ind. Cas. 732 : 41 A. 270 : 17 A.L.J. 189. No doubt Section 177 (f) of the Agra Tenancy Act provides that an appeal lies to the District Judge where a question of jurisdiction has been decided by the Court of first instance. If this provision were strictly followed an absurdity would arise in some oases, as observed in the case of Deo Narain Singh v. Sitla, Baksh Singh 47 Ind, Cas. 891 : 40 A. 177 : 16 A.L.J. 590 to which I have already referred. A parly may select his own forum of appeal by raising a plea which could never have been raised, but, in my opinion, the view which was adopted by my brother Piggott in the case of Umrai Singh v. Ewaz Singh 49 Ind. Cas. 732 : 41 A. 270 : 17 A.L.J. 189 seems to me to be the right criterion in a case of this kind. Ha observed in his judgment which was affirmed in Letters Patent, that where there was a plea that the suit as brought was not cognizable by a Revenue Court, that is to say, that assuming* the allegations made in the plaint to be true, the Assistant Collector had no jurisdiction to entertain that plaint," that would not be a plea of jurisdiction which was a mere futile and nominal plea but a proper plea to raise. Where such a plea has been raised and decided, an appeal lien from the decision of the Revenue Court to the District Judge under Section 177 (f). In the present case the defendant raised the plea as stated above, that upon the allegations contained in the plaint the suit was not one of the nature cognizable by a Revenue Court. The question whether under Section 34 of the Tenancy Act the defendant could be deemed to be a tenant and could be sued for ejectment in the Revenue Court was a debatable question and, therefore, when the defendant raised the plea that upon the allegations made in the plaint the case was not cognizable by the Revenue Court, he raised a substantive plea of jurisdiction and not a plea which could never be advanced seriously. If the case had been finally decided in favour of the plaintiff, the defendant's appeal Would have lain in the Court of the District Judge. As the plea was overruled and in the end the suit was dismissed by the Court of first instance, the plaintiff was entitled to prefer his appeal to the Court of the District Judge. I think the learned Judge of this Court has rightly held that the appeal lay to the lower Appellate Court. The plea to the contrary now put forward does not come with good grace from the defendant, who himself raised the plea of jurisdiction.

3. There have been some arguments addressed to us upon the merits of the case. On the merits I see no reason to differ from the view taken by the learned Judge of this Court. The defendant was a party to the partition proceedings in his character as a co-sharer. If he claimed the lands now in suit as lands in respect of which he had the rights of an occupancy tenant, he ought to have put forward that claim at a proper stage of the partition proceedings. Not having done so and the partition proceedings having been completed, it is too late for him now to contend that he has lights of occupancy as a tenant in respect of these lands and that he still possesses those rights The lands were treated in the partition proceedings as his khudkasht lands It may be that they were so treated through a mistake, but the fact remains that the partition took place on the basis that the lands were his Khudkasht lands. If they are burdened by his alleged rights of occupancy, the effect will be to diminish the value of the share which has been allotted to the plaintiff and to that extent to annul the effect of the partition. This cannot be done after the partition proceedings have been completed and confirmed. The learned Judge of the lower Appellate Court was, in my opinion, wrong in saying that the defendant was equitably estopped" from raising the plea. The defendant, in my opinion, is concluded by the partition proceedings and is not entitled to go behind those proceedings in this suit. I would dismiss the appeal with costs.

Rafique, J.

4. I am also of opinion for the reasons given by my learned brother Mr. Justice Banerji that this appeal should fail. I would, therefore, dismiss it with costs.

Piggott, J.

5. I am of the same opinion. I only take it upon myself to add a few words because I was principally concerned in the decision in Umrai Singh v. Ewaz Singh 49 Ind. Cas. 732 : 41 A. 270 : 17 A.L.J. 189, which has been re lied upon as if it were an authority in favour of the appellant. At the time when I pronounced that decision, neither of the other two oases to which we have been referred, namely, Deo Narain Singh v. Sitla Baksh Singh 47 Ind. Cas. 891 : 40 A. 177 : 16 A.L.J. 590 and Damodar Das v. Jhaoo Singh 39 Ind. Cas. 87 : 15 A.L.J. 319, had yet been reported. I referred to the former of the two as an unreported case, and my principal reason for adding these remarks at this stage in the present case is, I think, that I made a mistake in doing so. My ratio decidendi in Umrai Singh v. Ewaz Singh 49 Ind. Cas. 732 : 41 A. 270 : 17 A.L.J. 189, which was apparently accepted by the learned Judges before whom the case came in appeal, was really different from that in Deo Narain Singh v. Sitla Baksh Singh 47 Ind. Cas. 891 : 40 A. 177 : 16 A.L.J. 590. The question, as I look at it, and as I still regard it, is one of interpreting the words a question of jurisdiction" in Section 177 (f) of the Agra Tenancy Act. I take those words to mean a plea by the defendant to the effect that, on the facts alleged by the plaintiff himself, the suit is not one which a Revenue Court has jurisdiction to entertain. Obviously it is open to a defendant to deny the facts alleged in the plaint, to set up a different state of facts and to plead that upon facts alleged by himself, the Revenue Court could not lawfully eject him or- grant the plaintiff whatever other relief the plaintiff was seeking from that Court This, however, is not, in my opinion, a plea of jurisdiction within the meaning of the sub-section above referred to. It is merely an assertion of the legal consequences which would follow upon the Court's affirming certain pleas of fact set up by the defendant It is so far from being a plea of jurisdiction that it presupposes the jurisdiction of the Court before which the said plea is raised to determine which set of facts is correct, that alleged by the plaintiff or that alleged by the defendant. A plea of jurisdiction, properly so called, is a plea that the facts as stated by the plaintiff himself are such that the Court before which the plaint is brought has no jurisdiction to entertain it, or to grant the relief therein sought. The other two oases of this Court, namely, Damodar Das v. Jhaoo Singh 39 Ind. Cas. 87 : 15 A.L.J. 319 and Deo Narain Singh v. Sitla Baksh Singh 47 Ind. Cas. 891 : 40 A. 177 : 16 A.L.J. 590 are to a large extent in conflict, and I think sufficient to flap that I should prefer, if the case were one which required the point to be determined, to follow the decision in Damodar Das v. Jhaoo Singh 39 Ind. Cas. 87 : 15 A.L.J. 319. It is suggested that, unless the view taken in Deo Narain Singh v. Sitla Baksh Singh 47 Ind. Cas. 891 : 40 A. 177 : 16 A.L.J. 590 be affirmed, it will always be open to any defendant in a suit brought in a Revenue Court, and exclusively cognizable by such Court, to invoke the appellate jurisdiction of the District Judge by entering a purely formal, and on the face of it unsustainable, plea, to the effect that the plaint as filed is not cognizable by the Revenue Court. With regard to this I think it sufficient to remark that, on the one hand; we are bound to enforce the law as we find it and to interpret the words of Section 177 (f) to the best of our ability, according to their plain meaning. On the other hand, I think the danger suggested will be found to have very little existence in actual practice. It is not as a rule the defendant in a suit before

the Revenue Courts who wishes to go out of his way to get that suit brought before a Civil Court in appeal. On the other matters which have been argued before us I have nothing to add to the judgment of Mr. Justice Banerji, I also would dismiss the appeal with costs.

6. The order of the Court is that the appeal be dismissed with costs.