

(1906) 12 AHC CK 0004
In the Allahabad High Court

Beni Pande and Others

APPELLANT

Vs

Raja Kausal Kishore Prasad Mal Bahadur

RESPONDENT

Date of Decision : 11-12-1906

Acts Referred:

Citation : (1907) ILR (All) 160

Hon'ble Judges : Banerji, J;Aikman, J

Bench : Division Bench

Judgement

Banerji and Aikman, JJ.—This appeal arises out of a suit brought by the appellants for a declaration that the property claimed was their abadhari property and was heritable and transferable, and that they were not liable to ejectment as ordinary lessees for a fixed period. Before the suit was brought the respondent sued the present plaintiffs in the Revenue Court for their ejectment from the land in question on the ground that they were his tenants holding under an expired lease. The present plaintiffs set up the defence that they were not the tenants of the respondent, but were subordinate proprietors. They thus raised a question of title. On this question being raised, it was open to the Revenue Court under the provisions of Section 199 of Act No. II of 1901 to adopt one of the two courses mentioned in that section. It could either require the defendants to institute a suit in the Civil Court for the determination of the question of title, or determine such question itself. It chose to follow the latter course and tried and determined the question of title. It came to the conclusion that the present plaintiffs were the tenants of the respondent, and passed a decree for their ejectment. It was open to the present plaintiffs to appeal to the District Judge, and, if necessary, to the High Court, from the decision of the Revenue Court. But instead of doing so, they appealed unsuccessfully to the Commissioner and to the Board of Revenue and then brought the present suit in the Civil Court. The learned Subordinate Judge has held that such a suit is not maintainable and has dismissed it. The learned Counsel for the appellants has addressed to us an able and ingenious argument in support of the contention that the suit is maintainable. The question which we have to determine in this case has already

been decided by a Bench of this Court in *Salig Dube v. Deoki Dube Weekly Notes*, 1907, p.1. We are bound by that decision, and we see no reason to dissent from the view there expressed. The provisions of the Tenancy Act, 1901, are in this respect different from those of the old Rent Act No. XII of 1881. As we have already said, under the present Act the Court of Revenue is empowered itself to determine a question of title raised before it, and in determining such question the Revenue Court is required by Sub-section (3) of Section 199 to follow the whole of the procedure laid down in the CPC for the trial of a civil suit. Reading that section with Section 200, which empowers an appellate Court to refer issues, if necessary, to any subordinate Civil Court of competent jurisdiction, it seems to us that the Legislature intended that the decision of a Revenue Court upon a question of title, where it chooses to determine that question, should have the same effect as the decision of a Civil Court. It is true that the language used in Section 199 of Act No. II of 1901 is not as explicit as that of Section 112 of Act No. III of 1901. But we think that the intention of the Legislature was the same in both cases. Were we to accept the contention of the learned Counsel for the appellants, the result might be that a question of title determined by a Revenue Court with all the formalities of a civil suit and decided in appeal by the High Court after issues had been referred to a subordinate Civil Court might be reopened by a suit in a Munsifs Court. Such could never, we think, have been the intention of the Legislature. Following the decision referred to above, we hold that this suit was not maintainable and the Court below was right. We accordingly dismiss the appeal with costs.