

**(1908) 12 AHC CK 0007**  
**In the Allahabad High Court**

Lachman Das

APPELLANT

Vs

Nabi Bakhsh

RESPONDENT

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**Date of Decision :** 04-12-1908

**Acts Referred:**

North Western Provinces Tenancy Act, 1901 — Section 195

**Citation :** 1 Ind. Cas. 161

**Hon'ble Judges :** John Stanley, C.J.; Banerji, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

1. This case has been referred to us by the learned District Judge of Saharanpur under the provisions of Section 195 of the Agra Tenancy Act, the learned Judge having doubts as to whether an appeal preferred to him lay in the Civil Court or in the Revenue Court. The suit out of which the reference arises was brought by a land-holder against a tenant and sub-lessees from that tenant. The plaintiff's allegation was that the tenant, who is the first defendant, had no power to grant sub-leases to the other defendants and that by granting the leases the tenant had not only contravened the provisions of the Tenancy Act but had also done an act detrimental to the land and inconsistent with the purpose for which it was let. The suit was described in the plaint as one under Sections 57 and 31 of the Tenancy Act. Section 57 of that Act provides that a tenant may be ejected on any of the grounds mentioned in the different clauses of the section. The ground mentioned in Clause (d) is that the tenant had sub-let or otherwise transferred his holding in contravention of the provisions of this Act. Under Clause (b) a tenant may be ejected on the ground of any act or omission detrimental to the land in his holding or inconsistent with the purpose for which it was let. If the suit is only against the tenant on the ground specified in Clause (b) it seems to us that an appeal would lie to the District Judge from the decree of the Court of First Instance u/s 177 of the Act, it being one of the suits included in Schedule IV, group B. But where the suit is for ejectment of the tenant and his transferee on the ground mentioned in Clause (d) of Section 57, it is a suit under the

second sub-section of Section 31 of the Act and is one of the suits mentioned in group C of the fourth Schedule. An appeal in such a case lies to the Commissioner u/s 179. The question is whether the present suit is one of the description mentioned in group 13, No. 13, or in group C, No. 18. In our judgment the suit was one u/s 31(2), being a suit in which the land-holder sued for the ejectment of the tenant and his sub-lessees on the ground mentioned in Clause (d) of Section 57. The fact of the sub-lessees being made parties to the suit clearly indicates that the suit is one of the description mentioned above. It is not a suit for the ejectment of the tenant on the ground of the commission of a breach of condition by a sub-lessee or on the ground of any act done or omission made by such lessee, as mentioned in Section 64(1)(a). Therefore the only section under which the suit in this case could be brought, and was brought, was Section 31(2). An appeal from the decree in the suit lay to the Commissioner.

2. We find that an appeal was preferred to the Commissioner but he returned the memorandum of appeal on the ground that a question of proprietary title was raised. On this point we are unable to agree with the learned Commissioner inasmuch as the first defendant, the tenant, never denied his tenancy and never claimed proprietary right in the land within the meaning of Section 199 of the Act. What he claimed was that under a custom prevailing in the locality he had a right to transfer his holding. This was not a question of proprietary title and Section 199 did not, therefore, apply. In our judgment the appeal ought to have been heard by the Commissioner and we accordingly direct that the petition of appeal be returned by the District Judge for presentation in the Court of the Commissioner.