

(1921) 01 AHC CK 0050
In the Allahabad High Court

Musammat Said-Un-Nissa Bibi	Vs	APPELLANT
Fida Husain and Others		RESPONDENT

Date of Decision : 15-01-1921

Acts Referred:

North Western Provinces Tenancy Act, 1901 — Section 196, 197

Citation : AIR 1921 All 112 : 61 Ind. Cas. 385

Hon'ble Judges : Rafique, J;Piggott, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The plaintiff in this suit is a co-sharer in a certain village and the principal defendants are also co-sharers. The plaintiff claims that she acquired a certain share from defendants Nos. 2 and 3, and that she has been in joint possession of that share from the commencement of the year 1323 Fasli, but that during the two previous years, viz., 1321 and 1322 Fasli, the first three defendants contrived to keep her out of possession. She claims profits from them on account of those two years. Both the Courts below have said that the suit as brought is not cognisable by the Civil Court. The lower Appellate Court has said, further, that it cannot deal with the case under the provisions of sections 196 and 197 of the Tenancy Act (II of 1901), because a suit for profits under that Act would be different in its nature from the suit actually brought. The decision of the Court below is not logical. If this was a suit essentially of a civil nature, and so different from a suit for profits under the Tenancy Act as to exclude all possibility of applying the provisions of sections 196 and 197 aforesaid, then the Courts below were wrong in holding that it was not recognize by the Civil Court, and the proper course was for them to determine what facts the plaintiff had proved and whether those facts entitled her to any relief, and if so against which of the defendants. The finding is that the defendant No. 1 had been in the enjoyment of the profits of the share in respect of which this suit is brought during the years in suit. A suit undoubtedly lies against him for the profits of those years. This is just one of those cases on the border line of the jurisdiction of the Civil and. Rent

Courts to which the provisions of sections 196 and 197 of the Tenancy Act are intended to apply. We have been referred in argument to the case of *Amin Ullah v. Hajira* 3 A.L.J. 767 : A.W.N. (1906) 222 decided by a Single Judge of this Court, the head-note of which is authority for the proposition that a suit for mesne profits cannot be treated as a suit for profits under the Tenancy Act. That observation is sound enough as applied to the facts of that particular case. The plaintiff there sought relief by cancellation of a case and recovery of joint possession. The Court granted him these reliefs, or which obviously he was bound to come to the Civil Court. It was held that a further claim brought by him on account of mesne profits was not sustainable because he could have obtained appropriate relief by means of an ordinary suit for profits. The Court refused in effect to detach one portion of the suit from the rest and to deal with it under sections 196 and 197 of the Tenancy Act. This decision was no doubt correct, but the facts of the present case are dissimilar. We think that the Judge of the lower Appellate Court could have dealt with this case under Sections 196 and 197 of the Tenancy Act (Local Act No. II of 1901) and that he ought to have done so. We, therefore, allow the appeal, set aside the decree of the Court below, and send the case back to that Court with these directions. The costs of this appeal, including fees on the higher scale, will be costs in the cause.