

(1918) 06 AHC CK 0025
In the Allahabad High Court

Nannhu and Others

APPELLANT

Vs

Sri Thakurji Maharaj and Others

RESPONDENT

Date of Decision : 28-06-1918

Acts Referred:

Citation : AIR 1918 All 23 : (1919) ILR (All) 37 : 46 Ind. Cas. 764

Hon'ble Judges : Pramada Charan Banerji, J;Piggott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pramada Charan Banerji and Piggott, JJ.—The facts out of which this case arises are these: The first respondent applied to the Revenue Court for partition of his share in certain zamindari. The present applicants put in an objection claiming that they had acquired proprietary interest in certain plots of land which they were holding as rent-free grantees. The Revenue Court considered this objection to be an objection raising a question of proprietary title and referred the present plaintiffs to the Civil Court). Strictly speaking this order was not correct. The court holding the partition proceedings could very easily have disposed of the objection on the ground that no court had yet declared that the objectors had acquired proprietary title. However, in accordance with the direction of the Revenue Court the plaintiffs instituted the present suit in the Civil Court claiming a declaration that by reason of their holding the rent-free grant for more than fifty years and for two generations they had acquired proprietary interest in the land in dispute. The court of first instance held that such a suit was not cognizable by the Civil Court and returned the plaint for presentation to the proper court. On appeal this order was affirmed by the lower appellate court. The present application is one for revision of the order of the appellate court and the contention is that the suit was cognizable by the Civil Court. We are of opinion that the view taken by the court below is right. Under the provisions of Section 158 of the Agra Tenancy Act it is the Revenue Court alone which could make a declaration that the muafi rights had ripened into proprietary rights. Having

regard to the provisions of Section 167 and the fact that cases u/s 158 are mentioned in the fourth schedule as cases cognizable by the Revenue Court, a suit like the present could only be brought in the Revenue Court and not in the Civil Court. The matter is concluded by the authority of the case of Baldeo Singh V. Mardan, Singh (1910) 7 A.L.J. 818. Following that ruling, we hold that the present suit was not cognizable by the Civil Court and the only court in which the plaintiff could have claimed the declaration which he sought was the Revenue Court. We accordingly dismiss the application with costs.