

**Suraj Kumar Vs. Chet Ram and ors.**

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**Court :** Allahabad

**Decided On :** Jan-15-1919

**Reported in :** (1919)ILR61All369

**Judge :** Henry Richards, Kt., C.J. and ;Pramada Charan Banerji, J.

**Appellant :** Suraj Kumar

**Respondent :** Chet Ram and ors.

**Judgement :**

**Henry Richards Kt. C.J. and Pramada Charan Banerji, J.**

1. The facts connected with the suit out of which this appeal arises are as follows: The defendants made a usufructuary mortgage in favour of the plaintiff of their zamindari, For the convenience of the parties the mortgagee made a letting of the mortgaged property to the defendants. Thus the defendants became tenants at a rent to their own mortgagee. Later on the plaintiff distrained for the rent alleged to be due under the letting. The defendants alleged that the distraint was illegal because (as they alleged) the mortgage had been discharged and that therefore the tenancy had come to an end, They instituted a suit under Section 142 of the Agra Tenancy Act, challenging the validity of the distraint on these grounds, That suit resulted in a finding by the Revenue Court that the mortgage had been discharged. Thereupon the plaintiff instituted the present suit, alleging that her mukhiar-am in collusion with the defendants had fraudulently endorsed

payment on the bond and returned it to the mortgagors, and also alleging that the mortgage was in fact unsatisfied and undischarged and that the full amount was due thereon. The plaintiff claims possession of the mortgaged property. The court below, without taking evidence, held that; the decision of the Revenue Court in the suit instituted by the defendants under Section 142 of the Agra Tenancy Act, operates as *res judicata*. *Prima facie* the decision of the Revenue Court would not operate as *res judicata* in the Civil Court because the Revenue Court was not competent to try the present suit.

2. The defendants, however, seek to call to their aid the provisions of Section 199 of the Agra Tenancy Act. That section provides that if in any suit or application filed in a Revenue Court against a person alleged to be the plaintiff's tenant, the defendant pleads that he is not a tenant but has a proprietary right in the land, the Revenue Court may either require the defendant to institute a suit in the Civil Court for the determination of the question of title or it may determine such question of title itself. The section goes on to provide that if the Revenue Court determines to decide the question of title itself, it shall follow the procedure, laid down in the Code of Civil Procedure for trial of suits, and, notwithstanding anything contained in Section 193 of the Act, all the provisions of the Code should apply to the trial of such question. It is contended that a question of proprietary title did arise and that the decision of the Revenue Court must be deemed to be a decision of a Civil Court. We may assume for the purpose of argument that where a question of proprietary title is tried by the Revenue Court in exercise of its powers under the section in a case brought by a person against another alleging the latter to be his tenant and the defendant pleads that he has proprietary title and is not a tenant, the decision of the Revenue Court may operate in the same way as if the decision had been the decision of a Civil Court. But it seems to us that the section does not apply in the present case. The section applies to the case of a suit brought against a person whom the plaintiff alleges to be his tenant. In the present case the suit was one under Section 142 of the Tenancy Act and was brought by the alleged tenant against the alleged landlord. Furthermore, it seems to us that there was no question of proprietary title involved in the previous suit. It was common case that the defendants were the proprietors. Musammat Suraj Kumar never claimed to be the proprietor. She only claimed to be mortgagee under a usufructuary mortgage

and the question between the parties was not who had 'proprietary title' but whether or not the mortgage had been discharged and satisfied. We must allow the appeal, set aside the decree of the court below, and remand the case to that court with directions to re-admit the suit in its original number and to proceed to hear and determine the same according to law. The appellants must have their costs of this appeal, Other costs will abide the result.

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