

Ram Karan Singh and anr. Vs. Ram Das Singh and ors.

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Court : Allahabad

Decided On : Aug-04-1931

Reported in : AIR1931All635; 136Ind.Cas.145

Appellant : Ram Karan Singh and anr.

Respondent : Ram Das Singh and ors.

Judgement :

ORDER

1. This is a defendants' appeal arising out of a suit for declaration, as it is worded:

that the plaintiffs are the owners in possession of 4 bighas and 12 biswas in the holding in dispute specified below, and according to this proportion they (the plaintiffs) are entitled to realize rent from the subtenants, and defendants 1 and 2 have nothing to do therewith.

2. Defendants 3 to 8 are the alleged sub-tenants. The holding in dispute was a fixed rate tenancy comprising 6 bighas 17 biswas and 15 dhurs of which the plaintiffs claimed 4 bighas and 12 biswas.

3. At a later date a further relief was added that:

an injunction may be issued to defendants 1 and 2, restraining them from offering obstruction in the plaintiffs' realizing the rent from the subtenants.

4. The plaint is as usual not very happily drafted to express what the plaintiffs obviously meant. In para. 4 of the plaint they stated that:

Suit No. 194 of 1912 of the Court of the Munsif of Jaunpur has been fought between the parties in which it has been decided that plaintiffs are the owners in possession of 4 bighas and 12 biswas, this decision is final between the parties and it is binding upon them.

5. Paragraph 5 stated:

A case has also been fought between the parties in the revenue Court which ordered that these plaintiffs are the owners of the property in dispute.

6. Now the history of the case which we shall have to set out in some detail, suggests that what the plaintiffs really meant by these pleadings was that they were the owners of 3/4ths (thus wrongly described in the judgments) of a fixed rate tenancy, while the defendants were the owners of the remaining 1/4th, that the plaintiffs and the defendants were not joint tenants of the whole fixed rate tenancy, but owned entirely separately from each other their own shares, and that therefore the defendants in interfering with the plaintiffs' collection of their own shares of the rents due by the subtenants were acting as trespassers.

7. The defendants pleaded that the rights of the plaintiffs or their predecessors-in-title to fixed rate tenancy in three-quarters had ceased as long ago as 25th June 1912, as a result of the ejectment suit brought by the father of the present defendants 1 and 2 in his capacity as zamindar against the predecessors-in-title of the plaintiffs.

8. It will be best now to state the history of the litigation about this property. One Badal Lonia owned a fixed rate tenancy. He mortgaged three-fourths of this to Bishunath, predecessor-in-title of the present plaintiffs. He subsequently sold the remaining one-fourth to the father of the present defendants 1 and 2. The description of the shares in the judgments as three-fourth and one-fourth appears to be a convenient method of briefly describing the shares.

9. On 22nd February 1912, Bishunath brought a suit on his mortgage, making Badal Lonia and the father of the present defendants 1 and 2 parties, and on 9th May 1912 he obtained an ex parte decree.

10. On 25th June 1912, the father of the present defendants 1 and 2 in his capacity as zamindar ejected Badal Lonia from three-fourths of the fixed rate tenancy, which had been mortgaged to Bishunath, for failure to pay rent. To this suit Bishunath was not 'made a party nor is, there anything to show that he knew anything about it.

11. About three years later, on 14th October 1915, Bishunath got the three-fourths of the fixed rate tenancy sold and himself purchased it. Subsequently he applied to the revenue Court and got mutation on 8th March 1917. The Assistant Collector relied on the civil Court proceedings in the mortgage suit and told the father of the present defendants that he should go to the proper Court and get a declaration if he felt that he was entitled to it. The Collector in his judgment upholding the order of the Assistant Collector said that he refused to be influenced by any games that the defendants' father might have been up to with the mortgagor in the matter of the ejectment. In the years 1920, 1921 and 1922 some suits were brought by the plaintiffs or Bishunath, their predecessor-in-title, for rent against the subtenants. The latter pleaded that they had paid the rent in good faith to the present defendants 1 and 2, and it being found that the plaintiffs and their predecessors-in-title had not ever collected any rents, there was no ground for holding that the payments of the subtenants which were actually made were made otherwise than bona fide by them and the suits were dismissed. That completes the history of the proceedings prior to the present suit which was instituted on 2nd September 1927. The plaintiffs say that defendants 1 and 2 denied the rights of the plaintiffs in June 1925, and date their cause of action from that denial, and also from 4th April 1923, when the last of the rent suits was decided against them in appeal. The trial Court dismissed the suit with costs. The lower appellate Court gave the plaintiffs the declaration asked for and is silent as to injunction. The defendants now appeal. Two main questions arise. First, whether Act 3 of 1926, Section 99, applies to ejectments or obstruction to possession occurring before 7th September 1926. Secondly what is the exact form of the issue which a Court has to determine when

considering the question of its jurisdiction in the light of Section 99, Act 3 of 1926. In reference to the first question, whether Act 3 of 1926, Section 99 is applicable at all to an ejectment or obstruction to possession occurring before 7th September 1926 it has been held by two Judges of this Court in Abdul Halkim v. Mukarram Ali : AIR1930 All158 :

that Section 99 can apply only to a dispossession which took place after 7th September 1926.

12. It is true that the learned Judges were in that case dealing with dispossession from a grove, but the language used is general. In view of the fact that Section 99 only deals with procedure, and does not affect any vested rights, it is at least open to question whether Section 99 is not applicable to some cases, at any rate of ejectment or obstruction to possession of date prior to the commencement of the Act.

13. The second question is concerned with the interpretation of Section 99, Act 3 of 1926, and more particularly, with the interpretation of the decision of the majority of the Judges in Ananti v. Chhannu : AIR1930 All193 . We think that the effect of the judgment of the majority in this Full Bench may be stated as follows:

1. Whether the suit is cognizable by the Court must be determined, in the first place, by the allegations made in the plaint.
2. If upon the allegations in the plaint the suit does not appear to be cognizable by the Court the plaint will be returned for presentation to the proper Court.
3. If, on the allegations in the plaint, the Court is of opinion that the suit is cognizable by the Court, mere allegations, whatever they may be, in the written statement will not oust the jurisdiction of the Court to try the suit.
4. It will proceed to try the issue as to its jurisdiction, and if it finds the facts alleged by the plaintiff to be true, it will proceed to trial of the other issues.
5. If it proceeds to try the suit and finds that the facts alleged by the defendant are true, with the result that it has no jurisdiction, it will dismiss the suit; unless even at that late stage the plaintiff is allowed to amend his plaint so as to make it entertainable in a revenue Court, in which case the plaint can be returned for presentation to the revenue Court.

14. The only difficulty that arises is in reference to the use of the learned Judges of the phrase at p. 503:

If it is found....that the facts alleged by the defendant are true.

and the repetition of practically the same phrase at p. 513,

the allegations made in the written statement...found to be true.

15. Taken literally, it would be found that the allegations in the written statement are e. g., the defendant is a land-holder the defendant has collected rents, and such like statements of facts. We do not think however that the words we have quoted be taken to mean that the Court in trying the issue of jurisdiction must literally determine the truth or otherwise of such allegations. The issue that it has to frame in order to determine questions of jurisdiction is not whether the defendant is a landholder, tenant etc., but whether the defendant is 'claiming as a landholder, tenant etc.' in the words of Section 99. But we have it on the authority of the same Pull Bench decision that the word ' claiming ' cannot be held to mean merely pleading a claim. The issue therefore which the Court has to determine is in effect whether the defendant is claiming as a landholder, tenant etc., and whether there is a reasonable substance in that claim. We think corroboration of our view that this was what was intended by the learned Judges is to be found in the passage at the bottom of p. 512 where they say:

It has been said that the object of the legislature was to attract to the revenue Courts all suits in which any question of tenancy rights is involved. We may accept this, but we may also insist that the question must be a real one and not merely a litigious allegation. If there is a real question the plaintiff will be aware of it, and he will either set it out in his plaint and have it tried by the revenue Court, or he will conceal it and find that his suit is dismissed by the civil Court.

16. Had it been clear that Section 99, Act 3 of 1926, was applicable to the dispossession in question in the present suit, which was long prior to 7th September 1926, we should have proceeded to apply the judgment of the Full Bench and the view that we take of it to the present case. There is however the

initial question as to whether Section 99 is applicable at all, and in view of the decision of the two Judges to which we have already referred, we think it desirable that the matter should be considered by the Full Bench. It has already arisen more than once to the knowledge of one of us, and calls for authoritative decision. Another point that might have arisen in this case is the applicability of Section 121, Act 3 of 1926, but it does not appear to have been raised in either of the Courts below by either side or by either Court.

17. In view of what we have said, let the case be laid before the Hon'ble the Acting Chief Justice with a view to the constitution of a Full Bench. Their Lordships then referred the matter to the Full Bench, which gave its decision as under:

Sulaiman, Ag. C.J.

18. The plaint as it was filed and as it stands unamended was merely for a declaration of title on the allegation that the plaintiffs were in possession. After the arguments were over, the plaintiff applied that if they were found to be out of possession, a decree for possession might be passed. The plaint may accordingly be treated as a plaint in a suit for declaration of title and, in the alternative, for possession. If the new Tenancy Act of 1926 were to apply, the suit would be under Section 121, and in the alternative under Section 99 of the Act.

19. If a new enactment lays down that a person may under certain conditions sue for certain specified reliefs, and he sues after the Act has come into force it would not, strictly speaking, be giving to the Act a retrospective effect if he avails himself of its provisions. The Act is in force when he is suing, even though his cause of action might have accrued before the Act was passed. It would be a retrospective effect, if we applied the Act to a suit previously instituted. The present plaintiffs-tenants are being ' prevented from obtaining possession ' of a part of their holding, and they have also possibly been ' ejected.' The Act does not say that the ejectment should have been before the Act came into force. It of course implies that they should have been ejected or prevented from obtaining possession,, before the suit is filed. The expression. ' otherwise than in accordance with the provisions of this Act,' to my mind does not mean that even if they had been ejected in accordance with the provisions of the previous Tenancy Act, they have

been conferred a right under Section 99. A statutory right conferred by a new Act may even be made a foundation of defence to the plea of *res judicata*. If the plaintiffs were ejected unlawfully before the new Act, they are persons who have been ejected otherwise than in accordance with the provisions of this Act.' Surely it cannot be said that in such a case they have been ejected in accordance with the provisions of this-Act. If the plaintiffs fulfil the requirements of the section and bring themselves within its scope, there appears to be no reason why they cannot avail themselves of a new enabling section which has come into force before the-suit is actually filed.

20. No doubt a substantial right is not assumed to be taken away by a new Act unless it expressly says so. But a right to sue in one Court rather than another or a right to wait for a particular period of time before suing is not a substantive right. The selection of forum and the period of limitation are ordinarily matters of procedure only. The selection of a Court in no way affects the right of suit itself. The Limitation Act does not necessarily extinguish the right, though it certainly places a bar against the remedy by suit.

21. It seems to me that so far as the old Section 79 and the new Section 99 are concerned, they do not deal at all with the choice of Court or the period of limitation. Under the former section a right to sue was conferred, and that right has been re-affirmed under the latter. Indeed, it has been to a certain extent enlarged, if not explained.

22. The period of limitation has been curtailed, if at all, as a result of Section 232' read with Schedule 4. The forum is fixed by virtue of Section 230 read with that schedule. There is nothing in Section 99-which either curtails the period of limitation or fixes the forum. This is patent from the fact that if Section 99 were omitted from Schedule 4, the result as to forum and limitation would be different, even though the phraseology of Section 99 were to be left absolutely untouched.

23. The legislature apparently intends that disputes relating to agricultural lands should be settled in the revenue Court, and settled promptly. It considers that six months provide an ample time for a tenant to sue. I would much rather consider it a deliberate provision than attribute to the legislature a blunder due to ignorance

that there may be hard cases unprovided for.

24. Section 230 confers exclusive jurisdiction on revenue Courts and ousts the jurisdiction of the civil Courts of suits " of the nature ' specified in Schedule 4. The legislature instead of saying ' all suits specified in Schedule ' has stated ' all; suits of the nature specified etc.' It would therefore seem to me that if the present suit is of the nature ' of a suit under Section 99, even though it may not strictly come under that section, the jurisdiction of the civil Court is barred.

25. No doubt under the old Tenancy Act it was held that a suit between rival tenants was cognizable by the civil Court. But one possible view would have been that even a rival tenant could obtain adequate relief from the revenue Court by impleading the landholder also, and therefore the old Section 167 applied to his case. There was certainly no bar to his impleading the rival tenant in a suit under the old Section 95. He might also have impleaded the landholder in a suit under Section 79 by treating the possession of a person claiming through the landholder as the constructive possession of the landholder. Similarly, it was held in a number of rulings that if a tenant was prevented from obtaining possession, he was not ' dispossessed.' Here again a different view was possible. Might it not be that the legislature has merely disapproved of these rulings? On this view the new Act in no way curtails the period of limitation or alters the forum.

26. Again, the only question before a civil Court is one of jurisdiction. The further question, what period of limitation would apply if the suit were filed in a revenue Court is not at all before us. Whatever we may say would be a mere obiter dictum and would not be binding on the revenue Courts. Revisions and appeals arising out of suits under Section 99 would lie exclusively to revenue Courts. In Schedule 4 there is no starting point of limitation mentioned where a tenant is prevented from obtaining possession as distinct from dispossession.' It may be that the revenue Courts may hold that the six months rule does not apply to such prevention. Or it may be that they may hold that the right to sue on such prevention has been conferral for the first time by the new Act which would give a fresh start for limitation. Or they may hold that such a suit is not barred by limitation at all, as there is no period of limitation fixed for it in the schedule. Or

they may say that in such a case the cause of action accrues year after year, and the rights of the parties must be determined irrespective of any question of limitation. It is unnecessary to speculate what the revenue Courts may actually hold as it is quite outside our function to do so. All that I can say is that when a question of limitation is raised it ought to be decided in accordance with the law of limitation in force at the time of the institution of the suit and not that in force at the time of the cause of action, unless there be any express provision to the contrary in the Act itself.,

27. I would not wish to express any opinion on the case of a rent-free grantee, who was not a tenant and it is doubtful whether his interest was a ' holding ' under the old Act.

28. I have accordingly grave doubts as to the inapplicability of Section 99. But I must admit that as a result mainly of some of the previous rulings of this Court, there might be great hardship in some cases and plaintiffs may be left without any remedy. As my learned brethren think that the section should not be made to apply where a cause of action on an ejectment had arisen before the Act was passed, I am not prepared to dissent, but solely because of the hardship mentioned above.

29. Defendants 1 and 2 are admittedly two of the zemindars of the mauza. After they obtained ejectment of Badal from the revenue Court they consistently took up the position that the fixed rate tenancy was extinguished, and never said that they continued to be co-tenants. I might have been inclined to the view held by the Board of Revenue that ejectment by a few out of several landholders would bring the case under the old Section 79 also. The entire coparcenary body cannot be treated as a corporation or as a single juristic unit. All the cosharers are landholders. For a person to be a landholder it was not necessary under Section 3 (5) of the old Tenancy Act that the whole rent should be payable to him. But the majority of my learned brethren think that the question does not arise because it is now found that the defendants are cotenants, and they therefore must have ejected the plaintiffs in the capacity of co-tenants and not zamindars. As it is not disputed that Section 99 of the new Act would now cover the case of dispossession by some of the landholders only, the question has lost its

importance. I need not therefore consider the position under the old Section 79 at any length.

30. The fear of a curtailment of the period of limitation or of the taking away of any vested right does not apply to a declaratory suit under Section 121, as no period of limitation is fixed for such a suit. Such a suit is clearly cognizable by the revenue Court only, even though the denial of title took place before the Act came into force.

31. It follows that if the plaintiff alleges that he is in possession and claiming the declaration against the landholder or persons claiming through him, but, in the alternative, asks for possession in case it be found that he was out of possession, his plaint is liable to be returned for presentation to the revenue Court. The Court however may require him to make up his mind whether he would admit his dispossession and ask for recovery of possession. If he does not admit dispossession, the Court cannot allow him to lead evidence to show that he is in possession, but must return the plaint. If the plaintiff gives up his allegation of being in possession and amends his plaint so as to turn the suit into one for recovery of possession on a dispossession which took place before the Act the Court should proceed to [try the question of title.

32. With regard to the interpretation of the rule laid down by the majority of the Judges in the Rull Bench case of Ananti v. Chhannu the referring order accurately represents it. The word 'claiming ' does not mean pleading in the written statement. If the suit cannot be thrown out on the allegations contained in the plaint, the Court must proceed to determine the question of fact whether the person sued against was a landholder, or any person claiming as landholder, or any person claiming through such landholder or person. A mere false allegation that he was so claiming would not do. The expression ' claiming through such landholder or person ' is an adjectival clause qualifying the word 'person.' It must be found that the defendant was such a person. One cannot be a person claiming through such landholder or person, unless he either derives title from him (e. g., a transferee) or holds under him (e. g., as a thekadar, lessee or tenant, etc.) or is authorized by him and is acting on his behalf as an agent or servant. If such a fact

were established in investigation by the Court, then, unless the Court permits the plaintiff to amend his plaint, the suit would have to be dismissed because the allegation, on which the plaintiff came to Court, that the defendant was a mere trespasser, would be found to be untrue.

Mukerji, J.

33. This is a reference to the Pull Bench to determine whether the suit brought under the following circumstances is cognizable by the civil Court in which it was instituted, or whether it should have been filed in the revenue Court.

34. The plaintiffs, who are the respondents here, are the sons and legal representatives of one Bishunath Singh. One Badai Lonia was a tenant at fixed rate of a holding comprising six bighas odd of land. The tenancy at fixed rate being transferable under the law, Badal Lonia made a simple mortgage of about 3/4ths of this holding in favour of Bishunath on 28th October 1903. Several years later, on 20th July 1911, he sold the remaining area of his holding to Sumran Singh, the father of defendants 1 and 2, who are the appellants before us. Bishunath Singh brought a suit on his mortgage, and made Sumran a party to the suit, along with the mortgagor, Badal. Bishunath obtained an ex parte decree for sale on 9th May 1912. In due course the decree was executed, the property mortgaged was sold and was purchased by Bishunath Singh himself, who got delivery of possession on 14th October 1915. In the meanwhile, Samran, who was a cosharer in the village, took steps to have Badal ejected, and took delivery of possession as against Badal on 25th June 1912. To these ejectment proceedings Bishunath was no party, and the lower appellate Court has found that the ejectment proceedings were fraudulent and held behind the back of Bishunath Singh in order to injure him. Bishunath Singh's name was recorded in the revenue papers by an order dated 8th March 1917, in spite of Sumran's objection to the contrary.

35. It appears that the fixed rate tenancy is in the possession of certain subtenants, and they pay rent. Bishunath Singh sued the subtenants for recovery of rent, but the subtenants pleaded that they had paid their rent in good faith to Sumran Singh. The suits succeeded in the first Court, but were lost in the Court of

appeal, which gave its judgment on 4th April 1923. Thereupon, the respondents brought the suit out of which this appeal has arisen to obtain a declaration that they were the owners of 3/4ths of the holding, and to that extent were entitled to recover the rents from the subtenants. While the suit was still pending in the Court of first instance, the plaintiffs asked for possession. The plaintiffs' case was that the principal parties, that is to say, the plaintiffs and defendants 1 and 2, were co-tenants, and the defendants as holders of a fractional share in the tenancy had no right to usurp the entire rent payable by the subtenants.

36. The defence was that defendants 1 and 2 were in possession as zamindars, having ejected Badal before Bishunath could put the tenancy to auction sale in pursuance of his mortgage decree. They also pleaded that the suit was not cognizable by the civil Court, and was barred by the six months' rule of limitation, inasmuch as Section 79, Tenancy Act, 1901, applied to the case.

37. The first Court dismissed the suit on the ground that the plaintiffs-tenants' rights had come to an end. In appeal by the plaintiffs, the subtenants were exempted on the ground that the main contest lay between the plaintiffs and defendants 1 and 2. The appellate Court found that the ejectment proceedings were bad and collusive, that the defendants' father could not have ejected the mortgagor tenant, because the former himself was liable to pay the rent, being a fractional owner of the tenancy, that the land being actually in the possession of subtenants, there could have been no dispossession of the plaintiffs and that, in any case, the dispossession of the plaintiffs was not by a zamindar, but by a co-tenant. The learned Subordinate Judge also found that defendants 1 and 2 were not the sole zamindars of the holding in question but were one of 35 or 36 cosharers owning the holding. On the question of jurisdiction both the Courts below held that the suit was cognizable by the civil Court.

38. In appeal the question is whether the suit was cognizable by the civil Court. The argument of the appellants is that the suit is between co-tenants, and therefore falls within the purview of Section 99, Tenancy Act of 1926, and that being the case, Section 230, Tenancy Act of 1926, barred the jurisdiction of the civil Court.

39. There can be no doubt that a suit between rival tenants falls within the purview of Section 99, inasmuch as it is a suit by a tenant against a person claiming through the landholder. It was held by a Full Bench of three Judges in the case of *Sahdeo v. Btuihai* : AIR1929 All571 that a suit between co-tenants falls within the purview of Section 99, Tenancy Act of 1926. The words 'claiming through' in Clause (b), Section 99, mean, holding a derivative title from the landholder. The idea is that where a suit is against a landholder or a person who pretends to be a land-holder, having a right to eject the plaintiff, or where the suit is against a person holding a derivative title from such landholder or person claiming as above, the suit should be governed by Section 99, Tenancy Act of 1926. 'Claiming through' cannot mean raising a plea by way of defence or making a false claim without the shadow of title. Here in this case, the defendants are purchasers of a quarter share of the fixed rate tenancy, and therefore they are persons who 'claim through' the landholder. The suit is, on the face of it, governed by Section 99.

40. The question however is whether Section 99 has a retrospective effect, and applies to a case where the cause of action arose before the Act came into force. In the case before us the Court below has granted a decree for possession, and therefore we must take it that the prayer for amendments of the plaint for granting possession was allowed by the lower appellate Court. The dispossession in this case must be taken to have taken place in 1923, when the appellate Court decided against the plaintiffs. The plaintiffs cause of action, for the suit for claiming possession arose in 1923, namely, more than three years prior to the coming into force of the Act of 1926. As stated above, the question is : Does this Act apply? If it does, the suit was wrongly brought in the civil Court, and it will be our duty to return the plaint to the plaintiffs for presentation to the proper Court.

41. There are solid reasons against holding that Section 99 has a retrospective effect.

42. Section 99 is not a rule of procedure of adjective law. It professes to lay down remedies for a wrong. The law of remedies is substantive law, and therefore ordinarily the law will have no retrospective effect. This is a well-known proposition of law, for which no authority need be quoted. It is, no doubt, open to the

legislature to enact a substantive rule of law and yet to give it a retrospective effect. But the presumption as regards interpretation is that, unless and until the legislature gives the clearest indication that a rule of substantive law will have a retrospective effect, the Court will not give the rule that effect.

43. In Craies' Statute Law (Edn. 3 by Pease and Gorman) there appears the following opinion at p. 326:

If the enactment is expressed in language which is clearly capable of either interpretation, it ought to be construed as prospective only.

44. Again the book quotes Lord O'Hagan as having pronounced the following:

Unless there is some declared intention of the legislature clear and unequivocal or unless there are some circumstances rendering it inevitable that we should take the other view, we are to presume that an Act is prospective and not retrospective.

45. At p. 330 appear the following observations:

It is a well recognized rule that statutes should be interpreted, if possible, so as to respect vested rights.

46. Again:

In the absence of anything in an Act to show that it is to have a retrospective effect, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time that Act is passed.

47. I may lay emphasis on the last quotation. Again at p. 331 we have the following

It seems a strong thing to hold that the legislature could have meant that a party who under a contract made prior to the Act, had as perfect a title to recover a sum of money as he had to any of his personal property, should be totally deprived of it without compensation.

48. I have quoted enough from the book to show that where an existing right is likely to be taken away by the operation of an Act, unless there is something which compels a Court to give the Act a retrospective effect, it will not give the Act that effect.

49. In the light thus thrown by decided cases, on the authority of which the observations quoted in Craies are based, I shall consider the provisions of Section 99.

50. So far as the Allahabad High Court is concerned, it was settled law that a suit between rival tenants was cognizable by civil Court, and the rule of limitation applicable was 12 years. No doubt some Judges have expressed a doubt as to the correctness of this proposition, but the proposition has been so long held in this Court that the rule laid down amounted to a rule of law. It is not necessary to quote authorities on the point. In view of this rule of law, the plaintiffs could very well wait for four years before they instituted the suit in 1927 to recover possession from their co-tenants. If the plaintiffs are now told that Section 99 applied to their case because the suit fell within the language of Section 99, the result would be that the plaintiff's would find that the six months' rule of limitation, under Article 12, Sen. 2, Tenancy Act of 1926, applied to their case and their suit was already time barred in October 1923, well nigh three years before the Act of 1926 came into force. This is a position which is hardly desirable. It was argued that the legislature really disapproved of the decisions of the High Court in which it was held that suits between tenants were covered by the Civil Procedure Code and not by the Tenancy Act of 1901, and really gave effect to a decision of the Board of Revenue to the contrary. This may be so; but did the legislature say in so many words, or by necessary implication, that they were not only overruling the opinion of the Allahabad High Court, but were also giving the law framed by thorn a retrospective effect, with the result described above? I fear there is no such indication of the mind of the legislature to be found within the four corners of Section 99.

51. Again, there is a number of cases in which similar hardships would accrue.

52. A rent-free grantee was not a tenant under the Tenancy Act of 1901, nor is he a tenant under the Tenancy Act of 1926. Yet the legislature has deemed it fit to put

him down with a tenant under the rule enacted in Section 99 of the Act of 1926. A rent-free grantee, not being a tenant, did not come within the purview of Section 79, Tenancy Act of 1901, which provided remedies for ejectment by a landholder. A rent-free grantee's suit, in case of ejectment by a landholder, was therefore, before the passing of the Act of 1926, cognizable by the civil Court, and the rule of limitation applicable to such a suit was 12 years, and not 6 months. Supposing that a rent-free grantee was ejected a year before the Act of 1926 came into force. When he brings his suit for recovery of his land against the landholder, he finds, if Section 99 applies, that he has to go to the revenue Court. So far there is no harm. But he finds also that his suit, by the application of Article 12, Schedule 4, Act of 1926, was already barred by time, six months prior to the promulgation of the Act of 1926. Is it a position desirable? Are we bound to hold that Section 99 has a retrospective effect, although the result of such retrospective effect would be so disastrous?

53. Again, let us take the case of a suit by a tenant against a person who claims to be a landholder, although he may not be one. Such a suit, before Section 99 came into force, was undoubtedly a suit cognizable by the civil Court, and governed by 12 years' rule of limitation. If the tenant was dispossessed by a person claiming to hold the position of a landholder, and claiming a right to eject the tenant, more than six months before the passing of the Act of 1926, he will find, when he brings his suit under Section 99, that it was already time-barred at the date of the institution of the suit, although he never had any reason to suppose that he should bring his suit so quickly.

54. Then again, let us take the case of a tenant who got a seven years' lease from the landholder. Let us suppose that having paid the premium and obtained a written and registered lease, the tenant is unable to get possession, and he must bring a suit. To such a suit Section 79 of the Act of 1901 did not apply, for it was no case of ejectment. It was accordingly held by this Court that the tenant's suit, in the circumstances, would lie in the civil Court, and the rule of limitation would be 12 years. If the tenant, after the passing of this Act, brings his suit within a year of his cause of action, namely, the date of the execution of the lease in his favour,, he would be told that his suit was already time barred within six months of the

arising of his cause of action. This is a contingency which must be avoided, and we must hold that Section 99 has' not a retrospective effect.

55. Examples may be multiplied to show that similar hardships would arise in other cases also.

56. But it has been argued that hardship is no good reason for interpreting a law otherwise than it should be interpreted, that if any hardship arises, it is not on account of an application of Section 99, but by the application of the rule of limitation, which is only a procedural law, and that when Section 99 gives only a right of suit and says that a tenant and others mentioned there ' may sue,' Section 99 must be applied. I shall consider this argument seriatim.

57. Before I take up any of these arguments, I will point out that the language of Section 99 of the Act of 1926 also points to the conclusion that it is applicable only when a cause of action arises after the Act has come into force. It contains the words 'otherwise than in accordance with the provisions of this Act.' A plain-tiff is allowed to sue under Section 99, and to ask for the remedies prescribed by it where he finds himself ejected from, or prevented from obtaining possession of his holding. How can it be said, if the ejectment of the plaintiff took place, or if the prevention from obtaining possession took place, before the Act came into force. Supposing the plaintiff described above wants to bring his suit at once and there is no Act of 1926 in force, how will he know that he has been ejected from, or prevented from obtaining possession of his holding ' otherwise than in accordance with the provisions of the Act of 1926?' It has been argued that the words ' otherwise than in accordance with the provisions of this Act ' mean nothing but this:' otherwise than in accordance with law.' If that was so, it would have been much easier and more expressive to use the latter expression than the former. By using the words 'this Act,' I should think the legislature intended that this Section 99 should apply only where the cause of action arises after the Act has come into force.

58. Now I take up the three arguments which I have noticed above.

59. First I take up the question whether the hardship alluded to above is caused by Section 99, or by the application of the law of limitation, and whether therefore we should apply Section 99, irrespective of the consequences due to the application of the law of limitation. In my opinion, this argument is only partial, and does not take notice of the full consequence of the application of Section 99. Section 99 cannot be read apart from the law of limitation that is applicable to a suit under Section 99. The argument of hardship is advanced only to show that it was not the intention of the legislature to apply Section 99 to cases in which the cause of action arose before the enforcement of the Act. If we were otherwise certain that Section 99 must be applied to a suit of the nature described in Section 99, then it would be immaterial for the purposes of the Court administering justice, whether the law of limitation adversely affected or not the litigants : for then we can take it that the legislature did not care if some cases of hardship did occur. But it is precisely because we do not know in clear terms that the legislature meant to apply Section 99 to cases where the cause of action arose before the law came into force, and because we know that as a matter of principle, substantive law, or indeed any law, is not to be given a retrospective effect, unless the intention is clear on the point, that we have to look to the consequences of the application of the law. So much for the first and second arguments.

60. The third argument is that the words may sue ' only make the section an enabling one, and not a compulsory one, and wherever the facts of the case bring it within the language of Section 99, it must be applied. This again, in my opinion, is a fallacious argument. Where Section 99 does not apply, because the cause of action arose before Section 99 became the law, the suit is based, not on. Section 99, but on older law, i. e., either the Civil Procedure Code or the Tenancy Act of 1901. The present suit is not under Section 99 pi the Act of 1926, and there is no compulsion on the plaintiffs to sue according to Section 99.

61. I come to the conclusion, then, that to the case before us, namely, to a suit by a tenant against a co-tenant for recovery of possession, on the ground that he was dispossessed in 1923, Section 99 has no application.

62. It follows that the plaintiffs' remedy is in the civil Court.

63. On the allegations made in the plaint, the suit was cognizable by the civil Court. The suit was taken cognizance of by the civil Court. Although the plaintiffs alleged in the plaint that they had been dispossessed by a co-tenant, it was open to the defendants to show that they (the defendants) had dispossessed the plaintiffs, not in their capacity of tenants, but in their capacity of zamindars. In other words, if the defendants succeeded in showing that they were the zamindars of the fields in question, and that they had dispossessed the plaintiffs in their (defendants') capacity as zamindars, the Court would be bound to find that it was a case to which Section 79 of the Act of 1901 applied, and the suit would be thrown out on the ground that the plaintiffs came to Court on a false cause of action, which did not give the civil Court jurisdiction to try the suit. But such is not the case here. It has been found that the plaintiffs' allegation is true, namely, that they were dispossessed by their co-tenants.

64. The rule of limitation for a suit like this, in which the cause of action arose in 1923, was 12 years, and the present suit is within that time. The result is that the suit was rightly decreed by the lower appellate Court.

65. I would, for the foregoing reasons, dismiss the appeal with costs, including counsel's fees in this Court on the higher scale.

Boys, J.

66. This case was referred to a Bench by Bajpai, J. sitting singly.

67. It came up for hearing before myself and Smith, J.

68. Before us, the Division Bench, the case was argued as if the plaint was framed as asking for relief against a trespasser. It is immaterial now to consider why this view of the case was accepted in argument, but it may be that it was to some extent due to the pleadings in para. 3 of the plaint, and paras. 13 and 16 of the written statement. The case was therefore argued before the Division Bench with reference to the effect on it of the decision in *Ananii v. Chhannu*, where it was held that where the plaintiff sues as a tenant alleging the defendant to be a trespasser, the case is cognisable by the civil Court. As the Division Bench was in some doubt

as to the meaning of the Full Bench when speaking of the issues to be tried by the civil Court, the case was referred to a stronger Bench with a view to interpret that part of the Full Bench decision in reference to which the Division Bench was in doubt. We were further of opinion that an important point was involved in the case, namely, as to the applicability of Section 99, Tenancy Act 3 of 1926, to cases where the ejectment, or the date on which the plaintiff first began to be resisted in obtaining possession, was prior to the commencement of the Act.

69. On the case coming before a Full Bench of three Judges, attention was drawn specifically to para. 1 of the plaint which suggests that the position taken by the plaintiff was that ho as co-tenant of three-quarters of an undivided fixed rate tenancy was being resisted by the defendants as co-tenants of the remaining quarter. In this aspect of the case, it is manifest that the decision of this Court applicable is not *Ananti v. Chhannu* but *Sahdeo v. Bhudai*, in which it was held that where a plaintiff 'sues for possession as co-tenant, alleging the defendant to be a co-tenant, ho must go to the revenue Court.

70. If this is all that there was in the case the appeal would have had to be allowed.

71. There remained however the question of the applicability of Section 99, and with this may be considered also the applicability of Section 121 also, of Act 3 of 1926. Section 121, again, was not relied on in argument before the Division Bench, but in our referring order we made reference to this section as requiring consideration.

72. I have no hesitation in holding that Sections 99 and 121 both deal with substantive rights and are not matters of adjective law. They both declare the right of the plaintiff an certain circumstances to sue. They have nothing to do with the question of venue, or any other matter of procedure; these matters are provided for by Section 230 read with Schedule 4. Nor have they even anything to do with the question of limitation.

73. To consider Section 99 first: I am of opinion that it is not applicable to any ejectment or resistance to possession, which ejectment occurred or resistance

commenced before the passing of Act 3 of 1926.

74. In the first place it does not apply to any ejectment, etc., which has been effected 'otherwise than in accordance with the provisions of this Act.' These words are ambiguous. Literally read, they clearly suggest that the Act is only intended to be applicable to circumstances occurring after the commencement of the Act, for a person could not be ejected or prevented from obtaining possession in accordance with the provisions of this Act before the Act came into force. On the other hand, to read the Act thus literally would mean to hold, in the first place, that a person, who had been lawfully ejected prior to the Act under the previously existing law, could be said not to have been ejected 'in accordance with the provisions of this Act,' and therefore under Section 99 a right of suit would be conferred by Section 99. This is manifestly absurd, but in effect any such absurdity would be prevented by the principle of *res judicata*.

75. I am disposed to think, that the existence of these saving words and the form in which they occur, may be very simply accounted for. A draftsman would naturally set out to say the circumstances under which a person ejected, etc., could sue. It would then occur to the draftsman or to somebody else:

But you have given him a right to sue 'if ejected,' and that would cover even lawful ejectment under this very Act.

76. This would suggest naturally incorporation of the words 'otherwise than in accordance with the provisions of this Act.' It might have occurred, but evidently did not occur to the draftsman that there was also the case of ejectment according to law under the previous Act.

77. Enough has been said to indicate that the words are ambiguous, and no amount of speculation can remove that ambiguity; and that being so, the most beneficial interpretation must be given to the words, and that is, that the Act does not apply to events occurring before the Act came into force. That is the most beneficial interpretation manifestly, for otherwise a suit might by the harsher construction be barred by limitation and might, owing to the change in the law, be barred by limitation months or years before the Act came into force.

78. It is true that in certain cases a new period of limitation may bar the remedy which a plaintiff would have had before the statute came into force giving the new period of limitation, but I cannot find anywhere that this is a hard and fast rule applicable without exception to all cases, and it appears to me that the present is a case to which certain remarks of Lord Campbell, C.J., are particularly applicable. I quote from Craies' Statute Law, Edn. 4 of Hardcastle on Statutory Law, 1907, p. 331:

The question arose whether this Act had a retrospective operation and was to apply to cases of damage done before its passing. The Court decided that it was retrospective, and Lord Campbell, C.J., in giving judgment, said : ' If the Act had come into operation immediately after the time of its being passed, the hardship would have been so great that we might have inferred an intention on the part of the legislature not to give it a retrospective operation, but when we see that it contains a provision suspending its operation for six weeks, that must be taken as an intimation that the legislature has provided that as the period of time within which proceedings respecting antecedent damages or injuries might be taken before the proper tribunal....'A certain time was allowed before the Act was to come into operation, and that removes all difficulty.

79. Now in the present case the hardship caused by holding the Act to be in the sense we are now considering retroactive is manifest, and in the Act itself there is no period of grace allowed to suggest that it was intended to be so retroactive. The Act came into force within seven days (i. e. the necessary period for printing and notifying in the Gazette) from the date of the Governor-General's assent.

80. As to Section 121 it has been established before us that on the pleadings as eventually settled this must be regarded as not merely a suit for a declaration but a suit also for possession.

81. I would therefore hold that the civil Court had jurisdiction and dismiss the appeal.

King, J.

82. I agree with Mukerji, J., that the jurisdiction of the civil Court to try the suit is not ousted by, Section 99 read with Section 230, Agra Tenancy Act, 1926.

83. As the lower appellate 'Court has granted a decree for a declaration and for possession, we must take it that the plaintiff was allowed to amend his plaint by adding a prayer for possession. Before this amendment of the plaint the plaintiff sought merely a declaration of his right as tenant. The jurisdiction of the civil Court to try such a suit was clearly barred by Section 121 read with Section 230, Tenancy Act, 1926. The material allegations and reliefs set forth in the amended plaint may be taken to be briefly as follows: The parties are co-tenant of a fixed rate holding, the plaintiff having a three-fourths share and the defendants a one-fourth share. The holding is cultivated by subtenants. The defendants collect the whole rent from the subtenants and deny the plaintiff's right to any share of rent, and thus have wrongfully dispossessed the plaintiff. The cause of action arose on 4th April 1923 when the plaintiff's rent-suit was dismissed by the appellate Court, and also in June 1925 when the defendants denied the plaintiff's title. The plaintiff prays for a declaration of title to three-fourths of the holding and for recovery of possession.

84. If we ignore the date of the cause of action, then the suit clearly falls within the scope of Section 99, Agra Tenancy Act, 1926, and the jurisdiction of the civil Court is barred by Section 230.

85. The main question for our determination therefore is whether Section 99 applies to a suit when the cause of action (i.e., the wrongful ejectment, or the wrongful prevention from obtaining possession) arose before 7th September 1926 when the Agra Tenancy Act of 1926 came into force.

86. I think this question should be answered in the negative, partly on general principles of interpretation, but mainly on the interpretation of Section 99 itself.

87. Before the Tenancy Act of 1926 came into force the plaintiff had a vested right of suing the defendants, his co-tenants, who had wrongfully dispossessed him, for recovery of possession. The suit lay in the civil Court, as Section 79, Tenancy Act, 1901, only applied to a suit by a tenant against his landholder. The plaintiff's case

was that the defendants ejected him as co-tenants and not as landholders, and the Court below has found this to be correct. The period of limitation was 12 years. We may take the cause of action to have accrued on 4th April 1923 when the plaintiff's rent suit was dismissed by the appellate Court. It is clear therefore that the plaintiff had a vested right of suit on 6th September 1926. Did he lose that right on 7th September 1926 when the new Act came into force?

88. Now it is a well recognized rule that statutes should be interpreted, if possible, so as to respect vested rights : Craies on Statute Law, Edn. 3, p. 330. Many cases might be cited to show that Courts have refused to allow statutes to have retrospective effect, although their language seemed to imply that such was the intention of the legislature, because, if the statutes had been so construed, vested rights would have been defeated.

89. The Gaming Act, 1922 repealed Section 2, Gaming Act, 1835 (which made money paid to the holder of securities given for consideration arising out of certain gaming transactions recoverable from the person to whom the securities were originally given) and enacted that : ' no action for the recovery of money under the said section shall be entertained in any Court.'

90. In *Henshall v. Porter* [1923] 2 K.B. 193, McCardie, J., held that in accordance with well-established rules of construction, as well as by virtue of Section 38 (2), Interpretation Act, 1889, the Act of 1922 does not prevent the bringing of an action under the repealed section of the Act of 1835, after the date when the repealing Act came into force, in respect of a cause of action which had arisen before that date.

91. It must be observed that Section 38 (2), Interpretation Act, 1889, is almost verbally identical with Section 6, U.P. General Clauses Act, 1904.

92. In accordance with well-established rules of interpretation therefore Section 99 must not be construed as defeating the plaintiff's vested right of suing for recovery of possession unless the legislature makes it perfectly clear that this was their intention.

93. Now if we construe Section 99 as applying to suits where the cause of action arose before the 7th September 1926, it is clear that the plaintiff is absolutely deprived of his remedy. The period of limitation for a suit under Section 99 is six months from the date of wrongful dispossession. This means that the suit became time barred on 5th October 1923, about three years before the Act of 1926 came into force.

94. It is argued that the time within which a suit must be instituted is a question of procedure and there is no vested right in. procedure. This is true, but in the present case if Section 99 were held applicable it would not merely mean that the plaintiff must sue in the revenue Court instead of in the civil Court and that he must file his suit within a shorter period. It means that the plaintiff cannot sue at all, as his suit had become time barred long before the new Act came into force. Hence the alteration in the rule of procedure would operate as an alteration of substantive law in absolutely depriving the plaintiff of his remedy. This is an undoubted hardship, and this case is by no means likely to be an isolated or exceptional case.

95. These considerations emphasize the duty of the Court to interpret the statute, if possible, so as to respect vested rights,

96. Turning now to the consideration of the language of Section 99 I think it may be fairly held to indicate that it is not intended to apply to cases where the cause of action arose before 7th September 1926.

97. Section 99 provides for a suit by a tenant. . . . ejected from or prevented from obtaining possession of his holding....' otherwise than in accordance with the provisions of this Act.' I lay stress on the last words. ' This Act' means of course the Act of 1926. Now take the case of a tenant ejected in 1923. It was obviously impossible at the time of the ejectment to determine whether he was, or not, ejected in accordance with the Act of 1926. Section 99 clearly could not apply to such a case unless we amplify the phrase so as to mean

otherwise than in accordance with the provisions of this Act, if this Act had been in force at the time of the ejectment.

98. But this is very far fetched. I think the language of the section shows that it was only intended to apply to cases where the cause of action arose after the Act of 1926 came into force. It is only in such cases that it is possible to decide whether the dispossession was, or was not, in accordance with the provisions of the Act of 1926.

99. I hold therefore both upon the general rules of interpretation, and upon the interpretation of the section itself, that Section 99 does not apply to this suit, as the cause of action arose before 7th September 1926. The civil Court therefore had jurisdiction to try the suit. I agree that the appeal should be dismissed with costs.

Bajpai, J.

100. I agree generally with the opinion of the Acting Chief Justice, but like him I am not prepared to dissent from the order proposed by the majority of the Bench.

101. I only wish to point out that I am of the opinion that the law of limitation is a law of procedure and the general rule is that a statute of limitation is retrospective in its operation and governs all proceedings from the moment of its enactment, even though the cause of action might accrue before the Act came into force. In *Soni Ram v. Kanhaiya Lal* [1913] 35 All. 227, their Lordships of the Privy Council held that in a suit brought on 4th March 1907 for the redemption of a mortgage, dated 2nd January 1842, the law of limitation applicable to the case was not Act 14 of 1859, the law in force on the date of the acknowledgments, but Act 15 of 1877 which was in force at the time of the institution of the suit.

102. It is said that the application of this principle might work great hardship in cases where the legislature in its wisdom curtails by a new enactment the period of limitation prescribed for a particular kind of suit, for it might well happen that a litigant in the belief that he had, for instance the 12 years for instituting the suit after accrual of the cause of action might wait for seven years and then, if a new Act is passed and the period is cut down to six years, he will not be entitled to maintain a suit, because he would be beyond time by a year on the date the new Act came into force and his right would be lost for no fault of his whatsoever. This argument assumes that a legislature would adopt such a drastic measure without

making provisions for cases of this kind by inserting a period of grace. I am therefore of the opinion that no argument can be advanced based only on the hardship of the situation, because I am sure that where the legislature cuts down the period of limitation, it will always provide for hard cases by putting in a period of grace.

103. When a period of limitation is prescribed for the institution of a particular suit, it does not create any right in favour of anybody; but simply prescribes that a suit of that nature has to be filed within that particular period and, if it is not so filed, the remedy is lost, although the right remains. That the right remains and is not extinguished is clear by the fact that, if a new enactment is passed and prescribes a longer period of limitation, the suer would be entitled to avail himself of that extended period of limitation and obtain redress. I wish, however to make it clear that the law of limitation is not always a purely adjective law, inasmuch as in certain cases it provides for the creation of rights by prescription, and the corresponding extinction of rights (Section 28, Lim. Act of] 1908), and if those rights have vested in individuals under one law of limitation, they cannot be divested by the introduction of a new law of limitation or by an amendment in the law. It is only when the retrospective application of a statute of limitation would destroy vested rights that it is not to be 'construed retrospectively'; otherwise the ordinary rule is that rules of limitation are rules of procedure and no one has a vested right in any period of limitation.

104. The suit, as amended by the addition of the prayer for possession, was cognizable by the civil Court, and we accordingly dismiss the appeal with costs, including counsel's fee in this Court on the higher scale.