

**Mt. Mukhtari Vs. Harbans Singh**

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**Court :** Allahabad

**Decided On :** Mar-28-1928

**Reported in :** AIR1928All614; 118Ind.Cas.172

**Appellant :** Mt. Mukhtari

**Respondent :** Harbans Singh

**Judgement :**

**Mukerji, J.**

1. This is a case of a nature of cases which have frequently occurred, and some sort of decision has been arrived at in this Court. It cannot be said that the decision has been satisfactory, but in the absence of a better method the decisions have to be accepted as laying down the right law.

2. Shorn of all surplusages the case of the plaintiff-appellant was this. She for certain service rendered by the defendant to her, agreed to grant in his favour a lease of a certain property for two years. The defendants taking advantage of the fact that the appellant was a pardanashin lady of immature intellect and a minor, obtained from her a document which she subsequently discovered was a perpetual lease for a very inadequate rent. She accordingly brought this suit out of which this appeal has arisen for obtaining a declaration that the lease was not binding on her. After the parties had adduced evidence the defendant took up the plea that the suit was not cognizable by the civil Court. The learned Munsif did not

enter into the question of jurisdiction on the ground that the point had been raised too late. He decreed the suit. The defendant went in appeal before the learned District Judge and he held that the suit was not cognizable by the civil Court as a relief in the matter in dispute could have been obtained by her by institution of a suit under Section 167, Agra Tenancy Act, The learned Judge was requested to hear the case under Section 196, Tenancy Act, but he was of opinion that section had no application.

3. In this Court it has been contended that the suit was cognizable by the civil Court and that in any case, the learned Judge should have taken cognizance of the appeal and could have decided it on the merits under the provisions of Section 196, Agra Tenancy Act.

4. On the first point the authorities of this Court seem to be clear that the plaintiff's remedy lay by institution of a suit in the revenue Court leaving it to the defendant to set up the lease complained of by the plaintiff in defence. When the lease is once set up the revenue Court would be seized of the jurisdiction to try the question how far it, was binding on the plaintiff. Such a suit could be either one of ejectment or for recovery of the larger rent which the plaintiff thought she was reserving by the document she was executing or by a suit under Section 95, Agra Tenancy Act. The relevant cases in this Court are *Sher Khan v. Debi Prasad* [1915] 37 All 254 following *Ram Singh v. Gajraj Singh* [1914] 37 All. 41, following again an earlier case *Rai Krishan Chand v. Mahadeo Singh* [1901] A.W.N. 49. In the case of *Sher Khan v. Debi Prasad* [1915] 37 All 254, *Chamier, J.*, was doubtful as to the correctness of the view taken by *Piggott, J.*, sitting with him, but thought that a *curius curiae* had been established from which he was not prepared to dissent (see p. 371 of 13 A.L.J.). I agree with the learned Judge that no attempt should be made to unsettle the law as it had been settled.

5. Coming to the second point, I think the learned District Judge was right. It cannot be said what would be the nature of the suit the plaintiff would decide to file in the revenue Court for obtaining the relief she wants. If she institutes a suit for example under Section 95, Tenancy Act, an appeal would not lie to the District Judge. Against the other two classes of the suits indicated above it cannot be said

that an appeal would necessarily lie before the District Judge. In the circumstances it was quite proper on the part of the learned Judge not to exercise the jurisdiction which was of a doubtful character.

6. The result is that the appeal fails and is dismissed with costs.

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