

**Lala Ramji Mal Vs. Devi Prasad**

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**SooperKanoon Citation :** [sooperkanoon.com/464833](http://sooperkanoon.com/464833)

**Court :** Allahabad

**Decided On :** Oct-19-1932

**Reported in :** AIR1933All43

**Appellant :** Lala Ramji Mal

**Respondent :** Devi Prasad

**Judgement :**

Sulaiman, C.J.

1. This is an application in revision from an order of an Assistant Collector, an appeal from which has been dismissed by the District Judge. A preliminary objection is taken to the hearing of this revision on the ground that the remedy lay by way of revision to the Board of Revenue and not to the High Court. In our opinion this objection has no force. Under Section 220, Agra Tenancy Act, every suit brought by a thekedar against his lessor which is of the same nature as' any suit for application specified in Schedule 4, which may be brought by a tenant against his landholder shall be deemed to be included in that schedule under the same serial number as such similar suit. Section 99 provides the remedy for a tenant who has been dispossessed. Section 212 provides a remedy for a thekedar who has been dispossessed. In Schedule 4, Serial No. 12. Section 99 is mentioned and an appeal is provided to the Commissioner. By virtue of the provisions of Section 220 a suit under Section 212 must be deemed to fall under the same serial number. But it is clear that where a question of jurisdiction has

been decided in the first Court and is also in issue in appeal, the appeal lies to the District Judge under Section 242(3)(b). In the present case a question of jurisdiction was raised and decided in the first court and was raised in appeal, and in fact the appeal has been disposed of by the District Judge, who came to the same conclusion as the learned Assistant Collector.

2. We are therefore of opinion that this court has jurisdiction to revise the order of the Assistant Collector under Section 253 of the Act if he has failed to exercise jurisdiction even though an appeal has been preferred to the District Judge and dismissed by him (see *Ram Iqbal Rai v. Telessari Kuari* : AIR1930 All713). The revision lies as Section 252 is inapplicable to the case. It appears that the applicant was holding a lease of a certain share in the village from the defendant previously. On the expiry of that lease his lease is said to have been renewed but he did not obtain possession or he was dispossessed. The applicant first applied to the revenue Court for the entry of his name in the annual register. A dispute was raised by the defendant as regards his possession and title, and the case went to the Sub-Divisional Officer. The present applicant failed to produce any evidence whatsoever and his application was summarily dismissed. It cannot be disputed that the order of the Collector dismissing the application for mutation of names was under Section 40 of U.P. Land Revenue Act.

3. The view taken by the Courts below seems to be that the order refusing to enter his name in the annual register is binding on the Revenue court and therefore it is no longer open to the Revenue Court to give him a decree for possession of the property. The learned Counsel for the respondent suggests that the proper remedy for the plaintiff may be to go to the civil Court for a mere declaration because there he cannot get possession and then to come back to the revenue Court and sue for possession. This would obviously be a tortuous course. In our opinion the effect of Section 40 and Section 44, Land Revenue Act has not been properly appreciated. Section 40(1) provides for disputes regarding entries in annual registers and says that they shall be decided on the basis of possession. Sub-section (2) provides that if in the course of enquiry into such a dispute the Collector is unable to satisfy himself as to which party is in possession he shall ascertain by certain summary enquiry who is the person best entitled to the property and shall put such person in

possession. Then Sub-section (3) says that no order as to possession passed under this section shall debar any person from establishing his right to the property in any civil or revenue court having jurisdiction. Obviously the section means that the order of the Collector regarding the entry of names in the annual register shall be final and shall not be challenged in any subsequent proceeding, (but that would not prevent the aggrieved party from establishing his right in a civil or revenue Court having jurisdiction. It therefore follows that if a suit for establishing such right lies in a revenue Court and not in a Civil Court his remedy would be to approach the revenue Court which would not be bound by the previous order refusing mutation of names. Similarly Section 44 merely provides that all decisions under Section 40 shall be binding on all revenue Courts. The binding character of the decision means that the refusal to enter his name in the annual register can no longer be challenged by any revenue Court.

4. In the present case the plaintiff does not wish to challenge the correctness of the mutation order. Indeed he now accepts the position that he was not in possession and that the entry of his name was rightly refused. The relief that he now claims is that he should be given a decree for possession on the ground that he has been dispossessed by his land-holder. We are clearly of opinion that a suit for recovery of possession against a land-holder when specifically provided for in the Agra Tenancy Act and to entertain which the revenue Court alone has exclusive jurisdiction cannot be barred merely on account of the fact that in the mutation proceedings the Court refused to recognize his position as a thekedar in possession. Section 212, Agra Tenancy Act, gives a thekedar who has been wrongly ejected or wrongfully prevented from exercising any of his rights as a thekedar the right to sue for recovery of possession. We are unable to hold that such a suit is barred. The effect of the view of the first Court that the suit is barred and that the plaintiff's remedy is only by way of some sort of a declaratory suit in a civil Court amounted to a refusal to exercise jurisdiction. We accordingly allow this application and setting aside the order of Assistant Collector, send the case back to that Court with directions to dispose of the same on the merits. The plaintiff applicant shall have the costs of this revision from the defendant respondent. Costs in the revenue Court will abide the event.

