

(1880) 02 AHC CK 0011

Allahabad High Court

Case No: None

Sawai Ram

APPELLANT

Vs

Gir Prasad Singh

RESPONDENT

Date of Decision: Feb. 11, 1880**Citation:** (1880) ILR (All) 707**Hon'ble Judges:** Straight, J; Spankie, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Spankie, J.

The facts of the case are very clearly set forth by the first Court in the elaborate judgment in favour of the plaintiff". In appeal the Judge modified the first Court's judgment, finding that when plaintiff has been dispossessed from the lands comprising his occupancy-right as tenant, he should have made an application under Clauses (m) and (n), Section 95, Act XVIII of 1873, and, as this application might have been made, the Civil Court had no jurisdiction to hear this part of the claim, which, indeed, if the Civil Court could have entertained it, was barred by limitation.

2. It is contended by the plaintiff that the Civil Court had full jurisdiction: the plaintiff in bringing this suit had adopted the only course open to him, his ejectment having been carried out in execution of a decree of Court, and this decree having been subsequently set aside: the Judge too had erred in holding that the claim was barred by limitation, and in dismissing the claim on account of the "khud-khast" lands.

3. We are of opinion that the applications referred to in letters (m) and (n), for compensation for wrongful dispossession, or for recovery of possession of land of which a tenant has been wrongfully dispossessed, do not apply to the present case, in which there was no wrongful dispossession within the meaning of the Rent Act, and that the claim of the plaintiff was not one for which a remedy was available u/s

95 of that Act, and, therefore, the Civil Court had jurisdiction. Holding this view, it follows that the limitation of Section 96 of the Rent Act does not apply. So, we think that the Judge was wrong in dismissing the claim for the rent of the "khud-khast" land which defendant let to tenants. The effect of the decree against the present plaintiff, when executed, put him out of possession of the entire estate which he held as lessee, and defendant took possession of all the lands. Therefore plaintiff is clearly entitled to a refund of all rents to which the lessee alone had a claim, if he had chosen, as defendant did, to let a portion of his sir.