

(1879) 07 AHC CK 0009

Allahabad High Court

Case No: None

Kanahia and Another

APPELLANT

Vs

Ram Kishen and
Others

RESPONDENT

Date of Decision: July 15, 1879

Citation: (1880) ILR (All) 429

Hon'ble Judges: Spankie, J; Oldfield, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Oldfield, J.

The plaintiffs sue to obtain possession and a declaration of their proprietary right in respect of 37 bighas, 13 biswas of land, alleging that defendants are their tenants and liable to pay rent for the land. The defendants, while professing to admit the plaintiffs' title to be owners, say that they pay the revenue on this land, pay no rent, and deny the plaintiffs' right to rent, and they call themselves tenants at fixed rates, and they aver that the case is not one cognizable by the Civil Court. The Munsif has disallowed this objection: he holds that their defence substantially amounts to a denial of the proprietary title of the plaintiff's and sets up their own title, and he proceeds to decide in favour of the plaintiffs' title and right to demand rent from the defendants, while he refers the plaintiffs to the Revenue Court to eject the defendants and to recover rent from them. The lower Appellate Court has reversed the decree and dismissed the suit on the ground that the Civil Court has no jurisdiction to try it. We are of opinion that the view taken by the Munsif is correct. The defendants do in substance deny the plaintiffs' title as owner, and set up their own, when they aver that they have a right to pay the revenue on the land to the Government, and are not liable to pay rent to the plaintiffs. The latter have clearly a cause of action for obtaining a declaration of their right to be owners and to demand rent from the defendants, and this matter is one which the Civil Court must

decide, leaving the plaintiffs to have recourse to the Revenue Court to eject the defendants, and to recover rent from them, supposing their position as tenants is established. We reverse the decree of the Subordinate Judge, and remand the case for trial on the merits. Costs to follow the result.