

(1912) 05 AHC CK 0060

Allahabad High Court

Case No: None

Ganesh

APPELLANT

Vs

Kundan

RESPONDENT

Date of Decision: May 1, 1912**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115
- North Western Provinces Tenancy Act, 1901 - Section 95

Citation: 15 Ind. Cas. 33**Hon'ble Judges:** Piggott, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Piggott, J.

The present suit was one for damages upon the allegation that the defendant had cut and carried off the crops upon certain land after the said crops had been grown by the plaintiffs. Incidents, a question arose as to whether the plaintiffs or the defendant were in law the rightful occupancy-tenants of the land in suit. Now, seeing that the suit as brought was one undoubtedly within the cognizance of the Civil Courts, it would seem to be difficult to hold in any case that those Courts were precluded from hearing and determining an issue incidental to the right decision of the suit. In any case, after the decision of a Bench of this Court in Bhup v. Ram Lal 8 A.L.J. 1009 : 11 Ind. Cas. 268 : 33 A. 795, it cannot be said that the Civil Courts are precluded, by reason of Section 167 read with Section 95 of the Agra Tenancy Act (Local Act II of 1901), from determining a dispute between rival claimants to an occupancy-tenancy. Once it is admitted that the Courts below had jurisdiction both to try this suit and to determine the issue whether the plaintiffs or the defendant were the rightful occupancy-tenant of this land, this application must necessarily fail. It is true that the matter had actually been brought before the Revenue Courts in a suit in which the present defendant Kundan appeared as a plaintiff and the

plaintiffs in the present suit as defendants jointly with the proprietor to whom the rent of the occupancy-holding in question was due. It cannot, however, be made a ground for interference in revision that the District Judge in this case refused to accept the finding of the Assistant Collector or that of the Commissioner in the suit u/s 95 of the Tenancy Act as having the effect of res judicata in the present suit. In the first place, a wrong decision on a question of res judicata would not ordinarily be a good ground for interference in revision u/s 115 of the Code of Civil Procedure. Apart from this, the decision of the District Judge on this point appears correct, inas-much as the Assistant Collector and the Commissioner would not have been competent Courts to try the suit then before him, so that Section 11 of the CPC would not apply. I find, therefore, no adequate ground for interference in this case. This application is dismissed with costs.