

has relied on the aforesaid observations of the Bench while deciding a point very similar to the one that has arisen in the present case. As the landlord wants ejection from the entire premises and not only from that portion which is in occupation of Shadi Lal and which is said to have been built in or about the years 1956-57 and as the unit would be the entire building which had been leased out to the tenant and not merely the portion in question, it is not possible to say that the tenant Om Parkash can take advantage of the notification with respect to the entire portion from which he is liable to be ejected once it is established that he had been guilty of subletting a portion of it.

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Grover, J.

In the result, this petition is allowed and the orders of the Courts below are set aside. The respondent is liable to eviction and his eviction is hereby ordered. He will have three months for vacating the premises in dispute. In view of the nature of the points involved, the parties will bear their own costs.

B.R.T.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

RAM KISHAN,—Petitioner.

versus

**THE DEPUTY COMMISSIONER, DELHI, AND OTHERS,—
Respondents.**

Civil Revision No. 559-D of 1959.

Delhi Land Reforms Act (VIII of 1954)—Sections 104 and 105 and Schedule I item 28—Suit for a declaration that the order of the Revenue Assistant was illegal and without jurisdiction and for a permanent injunction restraining the defendant from taking possession of the land—Whether triable by a civil Court.

Held, that item 28 of Schedule I of the Delhi Land Reforms Act, 1954, refers to declaratory suits under section 104 of the Act. The present suit is not a purely declaratory suit as the plaintiffs have, by way of consequential

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relief, also asked for a permanent injunction restraining the defendant from taking possession of the suit land from them, which relief cannot be granted by the Revenue Court. Where a suit embraces two reliefs, out of which one cannot be granted by a Revenue Court, the proper forum for the trial of such a suit is the civil Court because it can grant both the reliefs. It would be a very anomalous position if the plaintiffs were asked to go to a Revenue Court for getting a declaration and for obtaining an injunction on the basis of such a declaration, they should be directed to seek redress in a civil Court. Moreover where an order of a Revenue Court is challenged on the ground that it was without jurisdiction, then such a suit can only be tried by a civil Court as, under section 9 of the Code of Civil Procedure, the civil Courts have jurisdiction to try all suits of a civil nature, excepting those the cognizance of which is either expressly or impliedly barred. The provisions of the Delhi Land Reforms Act, 1954, do not expressly or impliedly bar the jurisdiction of the civil Courts to try the present suit.

Petition under section 44 of Punjab Act VI of 1918 for revision of the order of Shri Dalip Singh, Sub-Judge, 1st Class, Delhi, dated 9th November, 1959, holding that his court had jurisdiction to try and entertain this suit.

B. D. JAIN, ADVOCATE, for the Petitioner.

S. N. SHANKAR, ADVOCATE, for the Respondent.

JUDGMENT

Pandit. J. PANDIT, J.—The only point for decision is this revision petition is whether the civil Courts have jurisdiction to entertain the present suit.

It appears that in May, 1959, the Revenue Assistant declared Ram Kishan, petitioner, as a *bhoomidar* of the land in dispute. Thereupon, the Deputy Commissioner, in exercise of his powers under section 161 (c) of the Delhi Land Reforms Act, 1954 (Act No. 8 of 1954), on behalf of the Gaon Sabha filed a suit for a declaration that the said order of the

Revenue Assistant was illegal and without jurisdiction and for a permanent injunction, restraining the petitioner from taking possession of the land. It was alleged in the plaint that the land in respect of which the *bhoomidari* rights had been granted by the Revenue Assistant was waste land and from times immemorial it was being used as a grazing ground for the cattle of the entire village and, therefore, under section 7 of the Act it vested in the Gaon Sabha. It was further stated that the order of the Revenue Assistant was based on the entries in the *khasra girdawaris*, which had been got prepared by the petitioner in collusion with Partap Singh, Patwari.

The suit was resisted by the petitioner, who raised a preliminary objection that the Civil Courts were barred from entertaining such a suit, which was exclusively triable by the Revenue Courts under Act No. 8 of 1954.

On the pleadings of the parties, the following preliminary issue was framed in the case:—

“Whether the jurisdiction of the Civil Courts is barred to entertain and try this suit?”

The Court below held that the civil Courts had jurisdiction to try this suit. Against this order, the present revision has been filed by Ram Kishan.

Learned counsel for the petitioner submitted that this was a declaratory suit under section 104 and by virtue of the provisions of section 185, it was exclusively triable by a Revenue Assistant, as the same was covered by item 28 of Schedule 1 of the Act.

After hearing the learned counsel for the parties, I am of the view that there is no merit in this contention. Item 28 of Schedule 1 refers to declaratory suits under section 104 of the Act. The present case is not a purely declaratory suit. As already mentioned above, the plaintiffs have, by way of consequential relief, also asked for a permanent injunction restraining the defendant from taking possession of the suit land from them. Thus, obviously, this relief of a permanent injunction cannot be granted by the Revenue Court. Where a suit embraces two reliefs, mentioned above of which one cannot be granted

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and others

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 —————
 Pandit, J.

by a Revenue Court, then, in my opinion, the proper forum for the trial of such a suit is the civil Court, because it can grant both the reliefs. It would be a very anomalous position if the plaintiffs were asked to go to a Revenue Court for getting a declaration and for obtaining an injunction on the basis of such a declaration, they should be directed to seek redress in a civil Court. I may, however, mention that, in this connection, the learned counsel for the petitioner referred to a Single Bench decision of Bhide, J. in *Ruknuddaulah Nawab Mohammad Sajjad Ali Khan v. Md. Umar Daraz Ali Khan* (1), where relying on *Muhammad Hassan v. Ghulam Jilani* (2), the learned Judge held as under—

“Where part of a claim is triable by a Revenue Court and the other part is triable by a civil Court, the proper course is to have the plaint amended so as to bring the claim within the jurisdiction of the Revenue or the civil Court. Section 77 has no application to a case where the plaint itself comprises two claims of this kind.”

But this authority has no application to the facts of the present case, because there the suit comprised two claims, one of which was exclusively triable by a Revenue Court and the other by a civil Court. Obviously, therefore, the civil Court could not grant both the reliefs, whereas in the present case it could do so, as already mentioned above. Besides, it is undisputed that where an order of a Revenue Court is challenged on the ground that it was without jurisdiction, then such a suit can only be tried by a civil Court. Moreover, under section 9 of the Code of Civil Procedure, the civil Courts have jurisdiction to try all suits of a civil nature, excepting those the cognizance of which is either expressly or impliedly barred. In my view, the provisions of Act No. 8 of 1954 do not expressly or impliedly bar the jurisdiction of the civil Courts to try the present suit.

In view of what I have said above, this revision fails and is hereby dismissed. In the circumstances of this case, however, I would leave the parties to bear their own costs in this Court.

(1) A. I. R. 1932, Lah. 595.

(2) 81 P.R. 1904.