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was in the case of *Malkarjun* v. *Narhari* (1). Having regard to the view taken by us that the sale in the present case was not an irregular sale but a void one, we are of opinion that the application is not barred by limitation.

The appeal is accordingly dismissed with costs.

S. M. *Appeal dismissed.*

(1) (1900) I. L. R. 25 Bom. 337.

APPELLATE CIVIL.

Before Chatterjea and Panton JJ.

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Aug. 17.

PRAMADA NATH ROY

v.

BASIRUDDIN QUANJI.*

Jurisdiction—Trial—Suit instituted before certification by Government under s. 101 of the Bengal Tenancy Act, if and when can be tried—Bengal Tenancy Act (VIII of 1885), s. 111.

Section 111 of the Bengal Tenancy Act precludes the trial of a suit instituted even before certification by the Government under s. 101 of that Act of preparation of a record-of-rights, until three months after the final publication of the record-of-rights.

Ram Narain Singh v. *Lachmi Narain Deo* (1) and *Hira Koer* v. *Lachman Gope* (2) referred to.

APPEAL from Appellate Order by Pramada Nath Roy, the plaintiff.

This appeal arose out of a suit for recovery of rent at an enhanced rate. The plaintiff claimed additional

* Appeal from Order, No. 129 of 1923, against the order of Girish Chandra Sen, District Judge of Pabna, dated Feb. 12, 1923, reversing the order of Girja Bhusan Sen, Offg. Subordinate Judge of Bogra, dated Sep. 29, 1921.

(1) (1912) 17 C. W. N. 403. (2) (1913) 19 C. W. N. 1141.

rent for excess area under section 52 and enhancement under section 30 of the Bengal Tenancy Act on the grounds of prevailing rate of rent, of improvement in the productive powers on account of fluvial action and of increase of price of the staple food crops. The defences were that the defendant held the land at a fixed rent, that the rent was not liable to enhancement as the defendant was holding the lands at an uniform rate of rent from before the time of the Permanent Settlement, that the fertility of the lands of the holding had not increased by fluvial action but had diminished on account of deposit of sands, that there was no excess area in possession of the defendant and that the price of staple food crops had not gone up as alleged. At the hearing of the suit, the defendant raised a preliminary objection that under section 111 (*b*) of the Bengal Tenancy Act the suit could not proceed, inasmuch as notifications were published in the Government Gazette directing the preparation of record-of-rights under Chapter X of the Bengal Tenancy Act of all lands within the administration boundaries of the district in question. The Court of first instance overruled the preliminary objection, holding that the suit being instituted before the notification of 1920, there was no bar to the trial of the suit. In the opinion of the trial Judge, the earlier notifications for preparation of record-of-rights had been superseded by the notification of 1920. On the merits, the learned Judge partially decreed the suit. On appeal by the defendant, the District Judge set aside the decree of the trial Court holding that section 111 of the Bengal Tenancy Act was a bar to the trial and remanded the case to the primary Court for trial of the other issues according to law after three months from the final publication of the record-of-rights.

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The plaintiff, thereupon, preferred this appeal to the High Court.

Babu Dwarkanath Chakrabarti (with him *Babu Beereshwar Bagchi*), for the appellant, contended that as the present suit was instituted, the written statement filed, issues settled and some evidence adduced before the notification of 1920, section 111 of the Bengal Tenancy Act had no application. The notification had no retrospective effect. Section 111 should not be so construed as to give retrospective effect to the notification. See *Manjhoori Bibi* v. *Akel Mahumed* (1). The language of section 111 is clear and contemplates only suits instituted after notification. If the contention that there is retrospective effect be sound, the Appellate Court also would be bound to give effect to it, with the result that a suit instituted years before the notification may be held to be bad if the notification be issued immediately before the disposal of the suit by the final Appellate Court. Suppose again that the hearing of the case is concluded and judgment is reserved and the notification is issued in the interval. If the contention were sound, no judgment could be delivered in the case. These results could hardly have been contemplated by the Legislature.

The right of suit is a vested right: *Gopeshwar Pal* v. *Jiban Chandra Chandra* (2). My right of suit could not be taken away by the subsequent notification.

Babu Atulchandra Gupta, for the respondent. The word "entertain" in section 111 does not refer to institution only. It includes hearing: *Ram Narain Singh* v. *Lachmi Narain Deo* (3), *Hira Koer* v. *Lachman Gope* (4). If "entertain" means institution

(1) (1913) 17 C. W. N. 889, 910.
(2) (1914) I. L. R. 41 Calc. 1125.
(3) (1912) 17 C. W. N. 408.
(4) (1913) 19 C. W. N. 1141.

only, in those cases the suits should have been dismissed.

Babu Dwarkanath Chakrabarti, in reply.

CHATTERJEA AND PANTON JJ. The question raised in this appeal turns upon the construction of section 111 of the Bengal Tenancy Act and arises under the following circumstances. The plaintiff, appellant, instituted a suit on the 14th of April, 1919, for recovery of rent at an enhanced rate under section 30 of the Bengal Tenancy Act as well as for additional rent under section 52 of that Act against the defendant, who is a tenant.

The defendant put in his written statement on the 2nd of June, 1919. Subsequently on the 4th of July, 1921, he raised an objection that the suit could not be proceeded with having regard to the provisions of section 111 of the Bengal Tenancy Act, as an order had been made in June, 1920, under section 101 directing the preparation of a record-of-rights.

The Court of first instance disallowed the objection, tried the suit on merits and partially decreed the suit in favour of the plaintiff. On appeal the learned District Judge set aside the decree of the Court of first instance and sent back the suit for the trial of the other issues according to law after three months from the final publication of the record-of-rights to be prepared under the notification of 1920.

The plaintiff has appealed to this Court and it is contended that he was entitled to proceed with the suit notwithstanding the provisions of section 111 and that that section did not apply to a suit which had been instituted in a Civil Court prior to the order made under section 101 of the Act.

Now section 111 lays down that "when an order has been made under section 101, directing the preparation

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of a record-of-rights, then, subject to the provisions of section 104H, a Civil Court shall not until three months after the final publication of the record-of-rights entertain any application made under section 158 or any suit or application for the alteration of the rent, etc." On the face of it when an order has been made under section 101 the Civil Court's power to entertain a suit or application for the alteration of rent is suspended. The expression used is "entertain". That expression has been considered in connection with section 91 of the Chota Nagpur Tenancy Act where a similar expression is used and it has been held that a Civil Court shall not entertain a suit of a particular description does not mean that a suit, if instituted, shall be dismissed. The proper course is to adjourn the trial of the suit until after the final publication of the record-of-rights. See the case of *Ram Narain Singh* v. *Lachmi Narain Deo* (1). The same view has been adopted in the case of *Hira Koer* v. *Lachman Gopè* (2) in connection with the provisions of section 111 of the Bengal Tenancy Act. That is not, however, disputed by the learned vakil for the appellant. His contention is that that section cannot have retrospective effect so as to affect suits or applications which had already been instituted or filed before the certification by the Government under section 101 was made. It is urged that the statute should not be given retrospective operation unless it is so clearly expressed in the statute itself or the intention is apparent by necessary and clear implication and that to give effect to the provisions of the section as being applicable to suits or applications already pending before the order under section 101 is made would be to take away vested rights.

(1) (1912) 17 C. W. N. 408. (2) (1913) 19 C. W. N. 1141.

This argument appears to us to proceed upon the assumption that an application of the section to such suits or applications is to destroy or take away any right. But the Court below has merely stayed the hearing of the suit until after the expiry of three months from the date of the final publication of the record-of-rights. The stay of the suit, under the circumstances, cannot result in loss to the parties. In any case we think that the object of the Legislature is to avoid conflicting decisions of the Civil and Revenue Courts upon the same matters. That is why the trial of suit or application in Civil Court is prohibited by the section as soon as the order for the preparation of the record-of-rights has been made.

It is to be observed that the expression used is "shall not entertain," which would include the cases not only not already instituted but cases where suits have already been instituted but not tried. That section means that after an order has been made under section 101, Civil Courts shall not try any suit, if such suit has already been instituted, until three months after the final publication of the record-of-rights. That is the order which has been passed by the lower Appellate Court.. Under the circumstances we cannot interfere with the order.

The appeal is accordingly dismissed.

As, however, the objection was not taken by the defendant until long after the notification under section 101 had been made, we direct that each party do bear his own costs both in this Court and in the lower Appellate Court. The costs of the Court of first instance will abide the result.

S. M. *Appeal dismissed.*