

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

1881
June 2.

BIBEE SYEFUN (PLAINTIFF) *v.* RUDDER SOHAY (DEFENDANT).*

Landlord and Tenant—Suit for Rent—Evidence—Plea of Payment—Onus of Proof.

In a suit by a landlord against his tenant for arrears of rent due for a portion of the year 1283 (1876), the defendant pleaded payment and called as his witness the plaintiff's agent, who admitted the receipt of certain payments from the defendant's under-tenants during the time for which the arrears were demanded; but swore that they were payments made in respect of arrears due on account of previous years. The lower Appellate Court, reversing the decree of the Court of first instance, gave the defendant credit for the payments so admitted.

Held, that the lower Appellate Court was wrong; that the defendant having pleaded payment was bound to prove that the admitted payments were in respect of that portion of the year 1283 for which the arrears were claimed.

Section 12 of the Rent law applies to receipts given directly by the landlord to the tenant, and not to receipts given to third persons.

THIS was a suit by a landlord against his tenant, instituted in the Revenue Court of the Assistant Commissioner of Pachamba, under cl. 4, s. 23, Act X of 1859, and s. 12, Act VI of 1862, for the recovery of Rs. 1,000 as principal, and Rs. 250 damages, being arrears of rent for the year 1283 (1876). The defence was, that the plaintiff collected the rent claimed from the defendant's under-tenants, and the plaintiff's agent was called as a witness for the defendant. He admitted payment of certain sums from under-tenants in 1283 (1876), but stated they were not paid on account of rent for 1283 (1876), but for the previous year. The Court of first instance gave the plaintiff a decree for the full amount claimed with costs, on the ground that the defendant had failed to prove the payments alleged by him.

* Appeal from the Appellate Decree, No. 414 of 1880, against the decree of R. Towers, Esq., Officiating Judicial Commissioner of Chota Nagpore, dated the 8th December 1879, modifying the decree of Major L. Blithwayt, Assistant Commissioner of Pachamba, dated the 10th March 1879.

The defendant appealed to the Court of the Judicial Commissioner of Chota Nagpore, who gave him a decree for the sums paid in 1283 (1876). The plaintiff appealed to the High Court.

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Mr. *Sandel* for the appellant.

Baboo *Nil Madhub Sen* for the respondent.

The judgment of the Court (GARTH, C. J., and McDONELL, J.) was delivered by

GARTH, C. J. — We think that the lower Appellate Court has made a very serious mistake in this case in finding in favour of the defendant upon the plea of payment, without any evidence whatever to support that finding.

It was not denied that a certain sum for rent had become due to the plaintiff from the defendant for the year 1283, but the defendant's plea was that those sums had been paid. The *onus* was entirely upon the defendant to prove this plea, but instead of going into the witness-box himself, or at any rate calling his agent in order to prove the payments (which, if the pleas were true, they could readily have done), what the defendant did was this: He called the plaintiff's agent as his own witness, and he produced certain receipts of sums which had been paid in 1283; and the plaintiff's agent was then asked, whether those sums were not received. The plaintiff's agent acknowledged that they were received, but not in payment of rent for the year 1283. He stated that they were paid for the previous year, 1282. That is really the only evidence that was given upon the subject. It directly negatives the defendant's case; and yet, strange to say, the Judge has found in the defendant's favour. The very fact of the defendant and his agent not coming into the witness-box afforded of itself a strong presumption against the truth of the defendant's case. If the payments were really made for the year 1283, no one could know it better than the defendant and his agent, and there does not appear the least reason why one or both of them should not have been called. Instead of that the defendant chooses

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to call the plaintiff's agent; and the plaintiff's agent proved the case against him.

It does not at all follow, because certain sums were paid to the plaintiff in the year 1283, that they were therefore paid for the rent of the year 1283. The Judge himself says, that the accounts between the plaintiff and the defendant appear to have been kept in a very loose manner, and that there is no doubt that Khajah Mahomed Jan, who is the plaintiff's agent, was allowed to receive rent from the under-tenants, and to place it to the defendant's credit. This circumstance made it, in our opinion, the more necessary, that the defendant's plea of payment should have been strictly proved; instead of which, all that appears is this. It is shown by certain receipts, A, B, and C, that the plaintiff's agent received from under-tenants of the defendant in the year 1283 certain rents due from those under-tenants for that same year; but it does not at all follow that the defendant's rent, in payment of which those sums were received from the under-tenants, was the rent due for the year 1283. If he had not in fact paid his rent for the year 1282, the sums received from the under-tenants would have been properly credited to the rent of the year 1282.

The defendant has no right to abstain from offering (either by himself or his agent) any evidence or information to the Court; and then to call the plaintiff's agent as a witness, and ask the Court to discredit him when he disproves his case.

Then the Judge seems to think, that because in the receipts which the plaintiff gave, the year was not stated in respect of which the rent was paid, that raises a presumption against the plaintiff that the rent was paid for the year in which the payment was made. We entirely dissent from this view. In the first place, we think that s. 12 of the Rent Law, to which the Judge refers, applies to receipts given directly by the landlord to the tenant, and not to receipts given by the landlord to third persons, who probably would not understand anything of the state of accounts as between the landlord and his tenant; and in the next place, the fact of the landlord not stating in respect of what year the payment is made, cannot raise any presumption in favour of the tenant, that the rent was paid in respect

of any particular year. The tenant himself should take care, when he makes the payment, that the receipt is in the proper form. If he does not see to that, he has no right to ask the Court to presume anything in his favour from the omission in the receipt.

The case will be remanded to the lower Appellate Court to be re-tried with reference to these observations; and the Judge will be at liberty to receive further evidence on either side.

Case remanded.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

GODADHAR DASS (THIRD PARTY) v. DHUNPUT SING (SECOND PARTY).*

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*Land Acquisition Act (X of 1870)—Apportionment of Compensation-money—
Zemindar—Patnidar—Darpatnidar—Construction of Document.*

Where a patni and a darpatni has been given of land, which is afterwards acquired by the Government for public purposes, under the provisions of the Land Acquisition Act, the zemindar is, generally speaking, entitled to as much of the compensation-money as the patnidar is.

As a rule, ryots having a right of occupancy in such land, and the holders of the permanent interest next above the occupancy ryots, are the persons entitled to the larger portion of the compensation-money.

The principles on which compensation-money should be apportioned among the different holders discussed and explained.

Construction of darpatni lease.

IN this case it appeared that the Raja of Burdwan granted a patni lease of a certain zemindari in the district of Dinapore to Roy Dhunput Singh, who granted a darpatni lease thereof to one Godadhar Doss on the 6th February 1868. A portion of this land, amounting to about five bighas, was taken up by the Government for public purposes under the provisions of the Land Acquisition Act, X of 1870; and the question in this case was, how the money which was awarded by the Government should be apportioned. The kabuliat given by

* Appeal from Original Decree, No. 336 of 1879, against the decree of L. B. B. King, Esq., Judge of Dinapore, dated the 24th September 1879.