

1881  
 KRISHNA  
 CHURN  
 BALSACK  
 v.  
 PROTAB  
 CHUNDER  
 SUBMA.

defendants are now estopped by their conduct from saying that she had no such interest. We think that, having regard to the culpable delay made by the plaintiffs in applying to the Court to have the miras patta sent for, no costs of this appeal ought to be allowed. As to the costs of the lower Courts, they will abide the final result of the case.

*Case remanded.*

*Before Mr. Justice Miller and Mr. Justice Maclean.*

1881  
 June 2.

MAHOMED AMBER AND ANOTHER (PLAINTIFFS) v. PERYAG SINGH AND OTHERS (DEFENDANTS).\*

*Suit for Cancellation of Mokurari Lease — Forfeiture — Equitable Relief against Forfeiture — Beng. Act VIII of 1869, s. 52 — Act X of 1859, s. 78.*

Where, in a mokurari lease, there was a condition, that, in case of nonpayment of one year's rent, and its falling into arrears, the mokurari settlement was to be cancelled, and default was made and a suit for ejection was brought,—

*Held*, that, independently of the Rent Act, the defendants should be allowed in equity a reasonable time to pay the landlord's dues in order to prevent forfeiture.

*Mothoora Mohun Pal Chowdhry v. Ram Lall Bose* (1) followed.

*Held* also, that the provisions of s. 52 of Beng. Act VIII of 1869 are exactly similar to those of s. 78 of Act X of 1859, and applicable to the case of a mokurari lease; and, therefore, that a decree passed in conformity therewith, which allowed fifteen days for the payment of the arrears of rent found due and interest thereon, was a good decree.

THIS was a suit brought by the plaintiffs to recover arrears of rent, for the cancellation of a mokurari lease granted by them to the defendants, and to recover possession of the lands, the subject-matter thereof. The lease contained a clause as follows:—  
 “In case of nonpayment of one year's rent and its falling into

Appeal from Appellate Decree, No. 2310 of 1879, against the decree of J. F. Stevens, Esq., Officiating Judge of Patna, dated the 7th July 1879, affirming the decree of Baboo Poreah Nath Banerjee, Subordinate Judge of that district, dated the 25th January 1879.

(1) 4 C. L. R., 469.

arrears, the mokurari settlement will be cancelled; and in that case, we, the declarants, the mokuraridars, or our heirs or representatives, shall have no claim to the nuzurana money." And the plaintiffs alleged in their plaint that the rent had fallen into arrears, and claimed Rs. 1,349-9-7½, which sum was made up of the rent, Rs. 593, for the year 1285, corresponding with the year 1877-78, arrears for previous years, and damages calculated at 25 per cent.; and further claimed that the defendants had no right to the return of Rs. 4,000 paid by them as nuzurana. The defendants, amongst other pleas, denied that the rent had fallen into arrears as stated, or that the sum claimed from them was due; but the Subordinate Judge found that the sum of Rs. 722-4-6 was due by them, and gave the plaintiffs a decree in accordance with the provisions of s. 52, Beng. Act VIII of 1869, directing that, unless that amount, with interest at 12 per cent. from the date of the commencement of the accrual of the arrears up to the date of decree, was paid within fifteen days, the tenure should be avoided and the defendants ejected.

From that decree the plaintiffs appealed to the District Judge, and urged that the basis of the suit was not the provisions of s. 52 of Beng. Act VIII of 1869, but the contract, the terms of which were contained in the mokurari lease, and that s. 52 had, therefore, no application. The lower Appellate Court, however, following *Jan Ali Chowdhry v. Nittyganund Bose* (1), which was decided under Act X of 1859, and holding that, so far as it affected the decision in that case, the law under Beng. Act VIII of 1869 had not been altered, upheld the decision of the lower Court, and dismissed the appeal with costs.

The plaintiffs, accordingly, now specially appealed to the High Court, and brought forward the same contentions as they had done in the lower Appellate Court.

Baboo *Mohesh Chunder Chowdhry* and Moonshi *Serajul Islam* for the appellants.

Baboo *Chunder Madhub Ghose* and Baboo *Troyluckyo Nath Mitter* for the respondents.

1881

MAHOMED  
AMEER  
v.  
PRYAG  
SINGH.

The judgment of the Court (MITTER and MACLEAN, JJ.)  
was delivered by

MITTER, J.—This suit was brought to recover arrears of rent and also for the cancellation of the defendants' mokurari tenure, this latter prayer being based upon the following provision in the mokurari patta:—"In the case of nonpayment of one year's rent, and on its falling into arrears, the mokurari settlement will be cancelled; and in that case, we, the declarants, the mokurari-dars, or our heirs or representatives, shall have no claim to the nuzurana money." The Court of first instance found that Rs. 722-4-6 was due to the plaintiffs, and as regards the claim for the cancellation of the mokurari patta, the decree provides that, "unless the amount, Rs. 722-4-6, with Rs. 12 per cent. interest from date of the commencement of the accrual of the arrears up to this day, be paid within fifteen days from this day, the tenure will be avoided and defendants ejected." That decree has been upheld by the lower Appellate Court. It has been contended before us, that, under the terms of the patta, the Courts below had no option but to decree that the defendants had forfeited the mokurari tenure. We do not think that this contention is valid. We are supported in this view by the decision in the case of *Mothoora Mohun Pal Chowdhry v. Ram Lall Bose* (1). Pontifex, J., who delivered the judgment in that case, says:—"That the defendants," that is the tenants, "having insisted upon their equity to prevent forfeiture of the lease, provided they pay the whole of the arrears of rent according to the lease, and the costs which have been incurred in these proceedings, are entitled to rely upon such equity." Then he refers to certain decisions of this Court taking a contrary view, which decisions have also been cited before us and relied upon; and after referring also to the Privy Council decision in *Duli Chand v. Meher Chand Sahu* (2), ruling that s. 52 of the Rent Law may be applicable to the case of a mokurari or any other kind of tenure of a perpetual nature, he goes on to say,—“We do not think it necessary to decide in this case whether or not the provisions of the Rent Law actually

(1) 4 C. L. R., 469.

(2) 12 B. L. R., 439.

apply, because we think that, even if they do not in terms apply, we are bound by analogy to that law to apply in favour of the defendants an equity similar to the equity there given. We, therefore, think that if the defendants pay the whole of the rent due up to the present time, with interest according to the stipulations of the original kabuliati and patta, and also pay all the costs of the proceedings in both this Court and of the Courts below, the plaintiffs ought not to have khas possession decreed to them." The decision of the lower Courts in this case is entirely in accordance with the principle laid down here. The District Judge says in one part of his judgment: "On the question of damages at Rs. 25 per cent. claimed by the plaintiffs, but disallowed by the lower Court, I agree with the lower Court in thinking that no special claim for damages has been made out; and that the plaintiffs are amply compensated for the want of punctuality on the part of the defendants by award of interest at 12 per cent. per annum." It is quite clear that the case cited above—*Mothoora Mohun Pal Chowdhry v. Ram Lull Bose* (1)—is an authority in support of the decree which has been passed in this case; but it seems to us further, that the Privy Council case, referred to in that judgment, distinctly lays down that the provisions of s. 78 of Act X of 1859 apply to the case of a mukurari; and we entirely agree with the Judge that the provisions of s. 52 of the present Rent Act are exactly similar to those of s. 78 of Act X of 1859. In one of the cases relied upon by the learned pleader for the appellants, viz., *Mumtaz Bibee v. Grish Chunder Chowdhry* (2), Kemp, J., who delivered the judgment, says:—"Section 52 does not apply to the cases of taluqdars of the description of the defendants; and, therefore, the Full Bench Ruling, which has been quoted by the pleader for the appellant, to be found in the case of *Jan Ali Chowdhry v. Nittyanund Bose* (3), is not applicable to this case; that decision applies to the cases of ryots alone." It is clear from those observations, that the decision in that case proceeded, not upon the ground that there is any difference between the provisions of s. 52 of the present Rent Act and of s. 78 of Act X

1881

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 MAHOMED  
 AMEER  
 v.  
 FEBYAG  
 SINGH.

(1) 4 C. L. R., 469. (2) 22 W. R., 376. (3) 10 W. R., F. B., 12.

1881  
 MAHOMED  
 AMERRE  
 v.  
 PERYAG  
 SINGH.

of 1859, but upon the ground that none of the provisions of either of those sections apply to the case of a taluqdar. But upon that point the ruling of the Privy Council in the case quoted above is just the contrary. We must, therefore, follow the Privy Council's decision quoted above. On both these grounds, *viz.*, that, quite independently of the Rent Act, the defendants should be allowed, in equity, reasonable time to pay the landlords' dues in order to prevent forfeiture, and also upon the ground that the provisions of s. 52 of the Rent Act are applicable to this case, we think that the decrees of the lower Courts are correct.

The appeal must be dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Tottenham and Mr. Justice Maclean.*

1881  
 June 11.

SHIB CHANDRA CHAKRAVARTI AND OTHERS (DEFENDANTS) v.  
 JOHOBUX AND ANOTHER (PLAINTIFFS).\*

*Optional and Compulsory Registration—Priority of Registered over Unregistered Documents—Registration Acts (III of 1877), and (XX of 1866), s. 18.*

Documents the registration of which is optional, executed previous to the Registration Act (III of 1877), will not, if unregistered, take effect against later registered documents.

*S*, the owner of a seven-annas share in certain property, on the 19th November 1866, sold a one-anna share thereof to *A* for Rs. 30, the bill-of-sale not being registered, as under the provisions of Act XX of 1866, s. 18, the registration thereof was optional. Subsequently, *S* sold the remaining six annas to other persons; and then, on the 27th September 1876, sold another one-anna share in the same property to *B* for Rs. 140, the bill-of-sale with respect to this purchase being duly registered under the provisions of Act III of 1877. In a suit by *A*, who had never obtained possession of the one-anna share he had purchased, against *S*, *B*, and the purchasers of the other six-anna shares,—*Held*, that he was not entitled to succeed, as his bill-of-sale being unregistered was not entitled to priority over *B*'s, which had been duly registered.

Appeal from Appellate Decree, No. 1092 of 1879, against the decree of Baboo Kalidas Dutt, Second Subordinate Judge of Tippera, dated the 16th March 1879, reversing the decree of Baboo Ram Chunder Dhur, First Munsif of Nassiruggur, dated the 16th February 1878.