Before Mr. Justice Wilson and Mr. Justice Field.

BHUGWAN CHUNDER ROY CHOWDRI AND OTHERS (PLAINTIFFS), v. MANICK BIBEE (DEFENDANT).*

1882 *August* 23.

Act X of 1859, *s.* 23—*Revenue Court, Jurisdiction of—Surety for payment of rent—Binding Decree.*

In a suit for arrears of rent in a Revenue Court under Act X of 1859, the lessors joined as defendants the lessee, and another person whom they alleged to be a surety for the payment of the rent. An *ex parte* decree was made in favour of the plaintiffs, but it did not expressly make the alleged surety liable for the money awarded. In execution of the decree certain of the alleged surety's land was sold, and the decree-holders were the purchasers at the sale.

An application under Beng. Act VII of 1876 for the registration of their names as proprietors of the land purchased having been rejected, the decree-holders brought the present suit to establish their title to, and to recover possession of, the land.

Held, that the plaintiff's title was bad on the ground that the decree did not purport to bind the surety for the payment of the money awarded, and on the ground that a Revenue Court is not competent to entertain a suit against a person who has become surety for payment of rent.

THE plaintiffs, alleging that they had been in possession of the land in dispute previous to an order dated the 30th June 1879 of the Collector in a proceeding under Beng. Act VII of 1876, rejecting their application to be registered as proprietors, instituted this suit on the 26th June 1880 to establish their title to, and to recover possession of, the land. The facts material to this report appear from the judgment of the High Court.

The suit having been dismissed by the lower Court, the plaintiffs appealed.

Baboo *Kally Mohun Doss*, and Baboo *Sharoda Churn Mitter* for the appellants.

Baboo *Hurry Mohun Chuckerbutty* for the respondent.

The judgment of the Court (WILSON and FIELD, JJ.), was delivered by

WILSON, J.—We think that this appeal should be dismissed.

* Appeal from Original Decree No. 223 of 1881, against the decree of Baboo Uma Churn Kastogiri, Subordinate Judge of Tipperah, dated the 26th of June 1881.

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The suit is one to recover certain land, and the case] made is this: That the plaintiffs, or rather those from whom the plaintiffs claim, granted an ijara in December 1867 to the son-in-law of the present defendant, one Fuzur Ali; that Fuzur Ali executed a kabuliat in accordance with the ijara; that the present defendant executed at the same time through her mookhtar a bond for the purpose of securing payment of rent; that subsequently in a suit brought in the year 1868, in the Court of the Deputy Collector of Moonsheegunge in the district of Dacca, under Act X of 1859, against both Fuzur Ali and the defendant to recover arrears of rent, a decree was recovered; that after the Act had ceased to be law, and after Act III of 1870 had been passed, the decree (which would seem to have been transferred in accordance with the last mentioned Act by the Deputy Collector to the Subordinate Judge's Court at Dacca) was remitted for execution from the Court of the Subordinate Judge at Dacca to the Court of Tipperah, and that there in execution of the decree, the right, title, and interest of the present defendant in the land sued for was sold and purchased by the plaintiffs. This is the title on which they now sue.

It is obvious that, this title being founded upon a decree followed by execution, it must be shown, in order to make out a good title, *first,* that the decree was one purporting to bind the present defendant for the payment of money; *secondly,* that it was a decree made by a Court of competent jurisdiction.

The decree was made in a suit in which the son-in-law and the present defendant were both made defendants. The son-in-law, Fuzur Ali, is described as the principal defendant, and the other as merely a *pro formâ* defendant. The decree states, first, that the claim is for recovery of arrears of rent under Act X of 1859; it then goes on to recite the ijara, and it says:

"The defendant No. 1, on the strength of a deed of security executed by defendant No. 2, took a Tahoot settlement of jowar" so and so, which it describes in detail, and then it says: "The present suit was instituted on the 31st August 1869 for recovery

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of the balance Rs. 1,213-1-10-3, inclusive of interest, from the defendant," the word used being not in the plural.

"According to the reasons given in the judgment passed to-day in English" (which judgment was not put in evidence) "it is ordered that a decree be passed in favor of the plaintiffs together with costs, fee, and interest."

That decree throughout points out that one defendant is the principal debtor, and the other is a surety. It speaks of the money as due by the one, and it says that a decree is given without saying against whom. It says nothing about the principal debtor being, or possibly hereafter becoming, unable to pay the money decreed against him. It contains no such provision as the law directs in case of decrees against principal and surety requiring the money awarded to be levied from the principal in the first instance, and it does not anywhere expressly say that any amount of money is awarded against the surety.

It is quite consistent with the terms of the decree that the surety may have been made a party to it only to have a decision binding upon her as to the indebtedness of the principal debtor in case of subsequent proceedings against the surety. It is for the plaintiff to make out his title, and show clearly that the decree is a decree for money against the present defendant, and he has failed to do so. All the subsequent proceedings must, therefore, fall to the ground.

On the second question it appears to us also that the title of the plaintiff fails. That is the question of jurisdiction.

The decree relied upon was a decree given by the Deputy Collector, and it could be given by that officer only under s. 23, Act X of 1859. Now, that is an Act which, according to its preamble was intended to re-enact, with certain modifications, the provisions of the existing law relative to the rights of ryots with respect to the delivery of pottahs and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same, to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears, and to amend the law relating

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to distraint. That is to say, the preamble describes the law as a law relating to matters which arise between landlord and tenant as such. Then s. 23 describes what suits are to be brought in the Collector's Court. The 4th clause says: "All suits for arrears of rent due on account of land, either kheraj or lakhiraj, or on account of any rights of pasturage, forest rights, fisheries, or the like."

The Act does in some parts deal with rights of persons different from landlord and tenant, and where it does, it does so expressly. The very next section, (s. 24) in dealing with suits by zemindars against their collecting agents, expressly allows the sureties of such agents to be brought into such suit. Now taking the Act by itself, it appears to us to be free from reasonable doubt that sub-section 4 of s. 23 applies only to suits for rent by a landlord against his tenant as such, and not to suits against sureties or other persons not tenants. The authorities are very strong to the same effect. The most important of these is the Full Bench case, *Prosonno Coomar Paul Chowdry* v. *Koylash Chunder Paul Chowdry* (1). That case appears to us to be a clear and unqualified decision to the effect that the jurisdiction of the Revenue Courts under the sub-section in question was limited to cases between landlord and tenant as such, and did not extend to claims against any person other than a tenant. That has been followed in a series of cases; for instance, in *Kishen Buttee Misrain* v. *Hickey* (2), and in *Ram Tanu Acharji* v. *Komal Lochan Roy* (3). In a more recent case, *Bipinbehari Chowdry* v. *Ramchandra Roy* (4) there was some difference of opinion between the learned Judges before whom the case came as to the precise bearing of the rule of law upon the particular case before them, but all agreed that the only questions that the Revenue Courts could try were those between landlord and tenant as such. It is true that there are cases in which the jurisdiction has been upheld where the person sued has not been the person in whose name

(1) B. L. R. Sup. Vol., 759: S. C., 8 W. R., 428.

(2) 11 W. R., 406.

(3) 3 B. L. R., Ap., 37: S. C., 11 W. R., 407.

(4) 5 B. L. R., 234.

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the holding was taken, because the doctrine of benami has been recognized, and a suit might lie against the real tenant who had taken his holding in the name of a benamidar. An example of this will be found in *Heeralall Bukshee* v. *Rajkishore Mozoomdar* (1).

Two cases, however, were relied upon on the other side. Those are *Bhoobun Mohun* v. *Bhubo Soonduree Debia Chowdrain* (2), and an earlier case, *Koomeroonissa Begum* v. *Khyroonissa Begum* (3). These are said to be authorities for holding that a surety might be sued in a Revenue Court together with the principal for whom he had become surety.

The earlier of those cases appears to us to be by no means an authority for that proposition. The plaintiff in that case appears to have alleged the so-called surety to have been the actual tenant, and in actual occupation of the demised premises, and, therefore, liable to pay the rent. The defence set up suretyship. The facts brought before the Court do not appear from the report, and we are left wholly in the dark as to what the materials upon which the Court acted really were. All that we know is, that the Court sent the case back to be re-tried.

Then in *Bhoobun Mohun* v. *Sooduree Debia Chowdrain* (2) the decision taken by itself does appear to be inconsistent with the series of cases to which we have referred. But there again there is no report of the facts of the case, or of the arguments, and nothing to enable us to say what kind of case the Court was really dealing with. When we observe that this case was decided within a few months after the Full Bench decision in *Prosunno Coomar Paul Chowdry* v. *Koylash Chunder Paul Chowdry* (4), and that one of the learned Judges, before whom the case came, was himself a member of the Full Bench, it is impossible to suppose that the Court can have intended to decide something in apparent conflict with the decision of the Full Bench without stating its reasons for holding it not to be in conflict. We are bound, therefore, to assume that

(1) W. R., Sp. No., 58.

(2) 8 W. R., 452.

(3) S. D. A. Jan. to June 1862, p. 297.

(4) B. L. R. Sup. Vol., 759: S. C., 8 W. R., 428.

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there must have been facts in that case of such a nature as to put the matter on a different footing from the other cases.

These considerations are sufficient to dispose of the present case, and the appeal will, therefore, be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Tottenham and Mr. Justice Bose.

1882 *July* 31.

BALLY DOBEY (PLAINTIFF) *v.* GANEI DEO AND ANOTHER (DEFENDANTS).*

Execution of decree—Attachment—Shikmi Ghatwali Tenure.

A shikmi ghatwali tenure, held under the superior ghatwal, is not liable to be sold in execution, nor are its proceeds liable to attachment for satisfaction of the debt due from its holder.

Mr. *Evans*, Baboo *Mohesh Chunder Chowdhry* and Baboo *Mohini Mohun Roy* for the appellant.

Mr. *Branson*, Baboo *Sree Nath Dass*, Baboo *Doorga Mohun Dass*, and Baboo *Kuroona Sindhu Mookerjee* for the respondents.

The facts of this case sufficiently appear from the judgment of the Court (TOTTENHAM and BOSE, JJ.) which was delivered by

TOTTENHAM, J.—We are of opinion that the lower Courts' judgment is correct. The question involved in the suit is whether a shikmi ghatwali tenure, held under the superior ghatwal, is liable to be sold in execution, or its proceeds liable to attachment for satisfaction of the debt due from its holder. The lower Court has held that it is not liable for such debts, and we entirely concur in that opinion. The shikmi tenure partakes of the nature of the superior ghatwali tenure, and as the latter has been repeatedly held by this Court to be not liable for such debts, the former will be necessarily so. The inferior tenure cannot have larger incidents attached to it than the superior.

We accordingly dismiss the appeal with costs.

Appeal dismissed.

* Appeal from Appellate Decree No. 2457 of 1880 against the decree of of W. Oldham, Esq., Deputy Commissioner of Damka, dated the 29th September 1880, modifying the decree of C. W. Wilmot, Esq., Sub-Judge of Deoghur, dated 12th May 1880.