1884

PANYE CHUNDER SIRCAR v. HUR-CHUNDER CHOWDHRY.

far as regards the parties to the suit and persons claiming through or under them, vest the title to the property in the purchaser. In the case now before us, the plaintiff claims under one of the parties to the rent suit, that is, the defendant, and I think that the provisions of this section are therefore applicable to him.

I am therefore of opinion that, although the tenure in this case was sold under the provisions of the Code of Civil Procedure and not under the special provisions of Bengal Act VIII of 1869, the plaintiff is not entitled to succeed in this suit.

We dismiss this appeal, but without costs, no one appearing for the respondent.

McDONELL, J.—In this case it is found by the Court below that the zemindar was entitled to sell the whole tenure, and the sole question we have to decide is, whether he actually sold it. Both the Courts below have found as a fact that the whole tenure was sold, that the tenure was proceeded against and regarded as liable, and that the sale proclamation and sale certificate show that the tenure was sold. Under these circumstances I do not think that we ought to interfere, although there may have been irregularities in the sale proceedings, and I would therefore dismiss this appeal.

Appeal dismissed.

Before Mr. Justice Tottenham and Mr. Justice Norris.

1884
March 6.

ARUT SAHOO AND ANOTHER (DEFENDANTS) *v.* PRANDHONE PYKURA (PLAINTIFF.)*

Landlord and Tenant—Occupancy of homestead land—Right of landlord to determine tenancy.

The mere record of the name of a tenant, who is found in occupation of a particular piece of land, in Settlement proceedings, and of the rent payable by him, does not invest him with any permanent title to hold it.

Where an estate, at one time the property of the Government, was as a *khas* mehal settled ryotwari for a period of 30 years from 1247, and where in such Settlement *A* was recorded as tenant of the land at a stated rent, *Held* that the Court was not bound to presume that the origin of *A's* title was a grant to continue in permanent possession.

* Appeal from Appellate Decree No. 589 of 1883, against the decree of W. Wright, Esq., Subordinate Judge of Cuttack, dated 29th of December 1882, reversing the decree of Baboo Hurrey Kishto Chatterjee, Munsiff of Jajpur, dated the 31st of August 1881.

1884

ARUT SAHOO v. PRANDHONE PYKURA.

Prosunno Coomaree Debea v. *Rutton Bepary* (1) and *Addaito Charan Dey* v. *Peter Doss* (2) followed.

This was a suit for ejectment, upon a notice to quit, in regard to 4 ghoonts and 13 biswas of homestead land which the defendants and their ancestors had held ever since the Government Settlement at an annual rent of nine annas and seven pies. The defendants in answer denied the receipt of notice, and disputed the plaintiff's right to eject them. The first Court, though it found that not only had notice to quit been given, but also that it was sufficient, and held that by virtue of the Settlement made by Government the defendants acquired a title to hold the land at the same rent until a new Settlement should be made, and accordingly dismissed the suit. On appeal the Judge reversed the decision of the Court below, holding that the protection claimed by the defendants could only be claimed by a tenant on the ground that he had acquired a right of occupancy, or that the lease under which he held had not expired, but that neither of their contentions were or could be pleaded in this case. He was further of opinion that, though the defendant had been allowed to hold the land for a lengthened period without a lease at a small rent, that fact was not in itself sufficient to prevent them being ejected by the owner, and that there was nothing in the Settlement proceedings to justify the decision of the Court below. He accordingly reversed that decision and gave the plaintiff a decree with costs. The defendants now specially appealed to the High Court.

Mr. *R. E. Twidale* for the appellants.

Baboo *Koruna Sindhu Mookerjee* for the respondent.

The nature of the contention raised on the appeal is sufficiently stated in the judgment of the Court (TOTTENHAM and NORRIS, JJ.) which was delivered by

TOTTENHAM, J.—This was a suit to eject the defendant, after notice to quit, from a small piece of homestead land in respect of which it has been found that no right of occupancy could be acquired.

(1) I. L. R., 3 Calc., 696.
(2) 13 B. L. R., 417; 17 W. R., 383.

1884

ARUT SAHOO v. PRANDHONE PYKURA.

The estate was at one time the property of Government, and as a *khas* mehal it was settled ryotwari for a period of 30 years from 1247 B.S. In that Settlement the defendant was recorded as tenant of the land in suit at a rent of nine annas seven pie per annum. Subsequently the plaintiff became proprietor of the estate. The first Court held that by virtue of the Settlement made by Government the defendant acquired a title to hold the land at the same rent until a new Settlement should be made; and that this action to eject him would not lie.

The lower Appellate Court was of opinion that the fact that defendant had been permitted to hold the land for a lengthened period at a small rent was not *per se* sufficient to protect him from ejectment by the owner; and could see nothing in the Government proceedings at the Settlement to justify the Munsiff's inference in the matter. The Court accordingly made a decree in favor of the plaintiff.

Before us the pleader for the appellant has contended.—

1*st*.—That the Munsiff's view of the effect of the Settlement was right, and that the plaintiff was bound to respect that Settlement.

2*nd*.—That the Court below ought to have presumed from the circumstances of the case that the origin of defendant's title was a grant to continue in permanent possession.

We think that neither of these contentions can prevail.

As to the first it seems to us that the mere record of the name of a tenant who is found in occupation of a particular piece of land in Settlement proceedings, and of the rent payable by him, does not invest him with any permanent title to hold it, and admitting that the purchaser from Government was bound to respect the Settlement made with the ryots during its currency, that consideration would not bar the present suit which was brought after the termination of the period of that Settlement. Any further Settlement must be made not with the tenants, but with the proprietor of the estate.

As to the second contention the authority cited is *Govinda Chundra Sikdar* v. *Ayinuddin Sha Biswas* (1). But that case lays down no more than that the Court is at liberty to presume if it thinks fit from the particular circumstances of a case that the

(1) 11 C. L. R., 281.

land was granted for building purposes, and that the grant was of a permanent character. 1884

ARUT SAHOO v. PRANDHONE PYKURA.

We cannot hold that in the present case the Appellate Court committed an error of law in not making such presumption.

On the other hand, the plaintiff's right seems to be established by the authority of the cases, *Addaito Charan Dey* v. *Peter Doss* (1) and *Prosunno Coomar Debea* v. *Rutton Bepary* (2).

We must dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Maclean.

LALLA DABEE PERSHAD (PLAINTIFF) *v.* SANTO PERSHAD AND OTHERS (DEFENDANTS.)* 1884 *February* 19.

Interrogatories—Failure to answer within the time limited—Dismissal of suit —Civil Procedure Code, Act XIV of 1882, *Ch. X, ss.* 121, 126, *and* 136.

The question as to whether the Courts below have exercised a proper discretion in dismissing a suit under s. 136 of the Civil Procedure Code is one into which the High Court will not enter on special appeal.

When interrogatories are delivered with the leave of the Court under s. 121 of the Civil Procedure Code, and the Court orders such interrogatories to be answered within ten days under s. 126, there is virtually an order passed under the provision of Chap. X of the Code; and consequently upon the party interrogated failing to comply with such order the Court has the power to pass an order under s. 136.

IN this suit, which was instituted on the 24th April 1880, the plaintiff sought to have his right determined to, and his possession confirmed in 16 cottahs of land with certain trees thereon. He also sought to have certain orders of the revenue authorities in respect of the boundaries of the land cancelled, and to have it declared that the land and trees in suit were situate within his *milkiut* village and not in that of the defendant.

The defendant filed his written statement disputing the claim, and on the 11th August 1880 caused interrogatories to be delivered to the plaintiff's pleader, the return to which was ordered to be

* Appeal from Appellate Decree No. 88 of 1883, against the decree of J. Tweedie, Esq., Judge of Shahabad, dated the 27th of September 1882, affirming the decree of Baboo Bhagobutti Churn Mitter, Munsiff of Arrah, dated the 3rd of September 1880.

(1) 13 B. L. R., 417; 17 W. R., 383. (2) I. L. R. 3 Calc., 696.