Before Mr. Justice O'Kinealy, and Mr. Justice Bose.

RAMJAN KHAN (PLAINTIFF) *v.* RAMAN CHAMAR (DEFENDANT).* 1883 *June* 13

Second Appeal—Chota Nagpore Landlord and Tenant Procedure Act, (Beng. Act I of 1879), *ss.* 37, 137—*Arrears of Rent and Ejectment, Suit for.*

In suits instituted under Beng. Act I of 1879, for arrears of rent and ejectment on account of the non-payment of arrears of rent, a second appeal lies to the High Court, this class of cases not being within the provision of s. 137 of the same Act.

Effect of a previous decree, as evidence in a subsequent suit, stated.

Baboo *Juggut Chundra Banerjee* for the appellant.

Baboo *Jogesh Chunder Dey* for the respondent.

THE facts of this case are sufficiently set forth in the judgment of the Court (O'KINEALY and BOSE, JJ.) which was delivered by

O'KINEALY, J.—In this suit plaintiff sued for arrears of rent under Beng. Act I of 1879, called the "Chota Nagpore Landlord and Tenant Procedure Act," and for ejectment by reason of non-payment of rent. A preliminary objection has been raised that no appeal lies in such a suit, and in order to see whether an appeal is prevented, it is necessary to look at the terms of the Act.

Section 37, cl. 4 describes one class of suits that are triable under the Act—"all suits for arrears of rent due on account of land either rent-paying or rent-free, or on account of any rights of pasturage, forest rights, fisheries, or the like." Then comes cl. 5, which says: "All suits to eject any ryot, or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contracts by which a ryot may be liable to ejectment, or a lease may be liable to be cancelled." When we turn to s. 88 we find, "any person desiring to eject a ryot, or to cancel a lease on account of non-payment of arrears of rent, may sue for such ejectment or cancelment, and

* Appeal from Appellate Decree No. 710 of 1881, against the decree of the Judicial Commissioner of Chota Nagpore, dated 5th February 1881, reversing the decree of the Deputy Collector of Hazaribagh, dated the 30th July 1880.

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for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrears in a suit for such ejectment or cancelment." It is thus clear from a comparison of s. 88 with cls. 4 and 5 of s. 37 that a suit for ejectment or cancelment of a lease is a distinct and separate suit from a suit for arrears of rent, but by the provisions of s. 88 the two may be brought against the same person in the same action. Then turning to s. 137 it is declared: "In suits under cls. 2, 4, and 7 of s. 37, tried and decided by a Deputy Commissioner, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, the judgment of the Deputy Commissioner shall be final;" but suits under cl. 5 of s. 37 are not referred to, nor is an appeal under that clause barred by s. 137. We are, therefore, of opinion that the language of s. 88 of the Act clearly shows that suits under cl. 5 and cl. 4 are not of the same nature, but of a different kind, and although s. 137 prevents a suit for arrears of rent being appealed, it certainly does not in any wise prevent an appeal lying from a suit for ejectment. A case has been brought to our notice—*Parbutty Churn Sen* v. *Shaikh Mandari* (1), in which it has, it is urged, been held by a Division Bench of this Court, that a suit for ejectment or non-payment of rent does not, under Beng. Act VIII of 1869, give an appeal to this Court, unless the sum in dispute is more than Rs. 100. That is not a decision under the present Act, nor indeed does it support the contention put forward by the respondent. It was not an appeal in an ejectment suit, but from an order passed in execution of decree. With regard to the facts of the case it would appear that some time previous to the present suit, plaintiff sued the present defendant for arrears of rent due for the years 1932-1933, and up to Pous, 1934. That suit was decreed in favor of the plaintiff, and as it has not been set aside by any competent Court, it is still binding between the parties. In the present suit the defendant, as in the previous litigation, denied that the relation of landlord and tenant existed. He further also said that the land now sued for was not the land then in dispute.

In the first Court the Deputy Collector, taking into consideration

(1) I. L. R., 5 Calc., 594.

that the defendant had admitted that he was partly in possession of the land, compared the proceedings in the former case with those in the present suit, and on this ground held that the lands in dispute were identical in both cases. When the case went up in appeal the Judicial Commissioner decided that the previous decree was of very little weight, and as there was no independent evidence to show that the lands in dispute were the same in both cases, he dismissed the suit.

We are of opinion that the Judicial Commissioner is wrong in the conclusion he arrived at. If, on a comparison of the papers in the former and in the present suit, it was clear that the lands in dispute were the same, no independent evidence was necessary. Moreover we think that he has not given sufficient weight to the former decree. As we have already said, so long as it remained undisputed, it was binding between the parties, and showed that the relation of landlord and tenant existed up to Pous 1934. Since that time the defendant has not relinquished the land, nor has he shown that he has been dispossessed by a paramount title. If therefore his tenure is not transferable by the title deeds or custom, he is liable to ejectment for non-payment of such arrears as the lower Court may find to be due from him.

The decree of the lower Appellate Court is set aside, and that of the first Court affirmed, in so far as it declares the defendant is liable to ejectment for arrears with costs in this and in the lower Appellate Court.

Appeal allowed.