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As therefore the plaintiff has had full value for his beast in the shape of the Rs. 15 which was produced at the sale, it seems to me that, even if the suit were maintainable, the damages would be only the difference, if any, between the Rs. 15 produced at the sale, and the value of a bullock of the same kind in the bazar, plus the expenses of the sale, which of course the plaintiff had to pay.

The real truth seems to be, that the High Court rule in this respect requires alteration. Those beasts used in agriculture are not privileged, until the Court has expressed an opinion that they are so; and the rule should be so framed, as to allow of the execution-debtor making a claim in every case to have his beasts released, and to give the Court time to decide what may sometimes be a difficult question.

I think that the plaintiffs' suit should be dismissed, but without costs.

Suit dismissed.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Macpherson.

ISHAN CHUNDER CHATTOPADHYA (PLAINTIFF) *v.* SHAMA CHURN DUTT AND OTHERS (DEFENDANTS.)*

1883 *March* 28.

Landlord and tenant—Ejectment, Suit for—Denial by tenant of his landlord's title.

To a suit brought to recover rent in 1877, the defendant set up his lakeraj title; this suit was dismissed. In 1880, in a suit brought by the same plaintiff to obtain khas possession of the land in question in the former suit, against the same defendant and three others claiming under the same title as himself, the defence that the land was lakeraj was set up by all.

Held, that the case fell within the principle of the case of *Suttyabhama Dassee* v. *Krishna Chunder Chatterjee* (1), and that the plaintiff, who had successfully proved that he had collected rents from the predecessors of the defendants, was entitled to eject them as trespassers on their failure to prove their lakeraj title.

IN 1880 the plaintiff (who formerly was a co-sharer with others

* Appeal from Appellate Decree No. 1915 of 1881, against the decree of H. Beverley, Esq., Additional Judge of the 24-Pergunnahs, dated the 27th June 1881, affirming the decree of Baboo Uma Churn Dutt, First Munsiff of Baraset, dated the 28th July 1880.

(1) I. L. R., 6 Calc., 55.

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in, amongst other lands, the land in dispute in this case) brought this suit against the four defendants to establish his right and title to one bigha five cottahs out of the above mentioned lands, and for the recovery of khas possession of the same.

In 1877 the present plaintiff had brought a suit against defendant No. 1 (who had been registered as owner in the place of his deceased father, the former owner) for arrears of rent. In that suit defendant No. 1 denied the tenancy, and set up a lakeraj title; this suit was dismissed, and the plaintiff thereupon obtained partition of the property from his co-sharers, and then brought this present suit against the four defendants for the recovery of the share which fell to him on partition.

All four defendants set up a lakeraj title to the land claiming under the same title.

The Munsiff found that the land was not the defendants' lakeraj land, but that it belonged to the plaintiff, and that he had formerly collected rent from the defendants' predecessors, and gave the plaintiff a decree declaring his right to the share claimed by him, but declined to evict defendants 2, 3 and 4, as no notice to quit had been served. Both parties appealed to the Additional Judge. As regards the defendants' appeal, the Additional Judge found that they had failed to make out a lakeraj title, and dismissed their appeal. As regards the plaintiff's appeal the Additional Judge held that no notice to quit was necessary, inasmuch as the defendants had denied the plaintiff's title, but he further held that as the land sued for was held by the defendants as a single tenure under the plaintiff and his co-sharers, the plaintiff could not at his sole instance turn out the defendants, but that his co-sharers should (notwithstanding that partition had been come to) be made co-plaintiffs in the suit, inasmuch as the defendants were no parties to the partition proceedings. He therefore held that the plaintiff was not entitled to khas possession, and dismissed their appeal.

The plaintiff appealed to the High Court, and the defendants filed a cross appeal.

Baboo *Bhowanee Churn Dutt* for the appellant.

Baboo *Ambica Churn Bose* for the respondents.

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

GARTH, C.J.—I confess I have had some doubt during the argument whether this case comes within the principle which has been so frequently acted upon in this Court, and of which the case of *Sattyabhama Dassee* v. *Krishna Chunder Chatterjee* (1) forms an example.

But on a closer investigation of the facts, and having regard to the way in which the defendants have framed their defence in the present suit, I am satisfied that it does come within that principle.

In the year 1877, one of the four defendants, who had registered himself as the owner of the property in the place of his deceased father, the former owner, was sued for rent by the plaintiff in respect of his, the plaintiff's, share of this very land; and the defendants' answer in that suit was a denial of the plaintiff's title, and an assertion that he (the defendant) and his father had a lakeraj title to the property.

It is perfectly true that in his written statement in that case he also alleged that the land was so imperfectly described in the plaint, that he did not know for what rent the plaintiff was suing; but there was evidently nothing in that point, because there was no question at the trial as to the identity of the land in dispute any more than there has been in this suit. Any insufficiency of description, therefore, could not have misled the defendant.

It then appears that for some time before this former suit was brought, the plaintiff and his co-sharers had not obtained rent from the defendants, although their predecessors had done so in former years; when, therefore, the defendant in that suit denied the plaintiff's title, and set up a lakeraj title in himself, the plaintiff thought fit to proceed no further with his suit, but he withdrew it, with the intention of bringing a fresh suit for khas possession.

But before he brought this fresh suit, he and his co-sharers obtained a formal partition of the property; *and he is now solely entitled by virtue of that partition to the particular area in the estate in respect of which he now sues for ejectment;* and he brings his

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suit against all the four defendants, who claim under the same title.

The lower Appellate Court has dismissed the suit upon the ground that the plaintiff's co-sharers should have been joined as co-plaintiffs, but I cannot understand upon what principle, because, since the partition, the plaintiff and his co-sharers have had no joint interest in the property, and the area, which the plaintiff now seeks to recover, belongs to himself alone, and his co-sharers have no interest in it.

Had the suit been for rent, it might have been different; because then, notwithstanding the partition, the obligation to pay rent would, in the absence of any separate collection, have been to the plaintiff and his co-sharers. But here the plaintiff sues *to eject the defendants as trespassers from land which belongs to him alone*; and to have joined his former co-sharers in such a suit would have been nothing short of a misjoiuder of plaintiffs.

The real question in the case, which has been argued before us here, appears to be this: whether, in consequence of what the one defendant did when he was sued by the plaintiff in the year 1877, or in consequence of the defence which has now been set up in this suit, the plaintiff has any right to treat all the defendants as trespassers.

The point, I confess, which has rather weighed on my mind throughout the discussion has been, whether the three defendants, who were not sued in 1877, ought to be made answerable for the conduct of their co-defendant, so as to forfeit with him their rights as the plaintiff's tenants; and if those three defendants in their defence to this suit had contended that they were the plaintiff's tenants, and that he could not sue to eject them without a proper notice to quit, I should be much disposed to hold that they had a good defence on that ground.

But instead of that line of defence these defendants are now urging here up to the very last the selfsame defence, which the one defendant raised in 1877; and taking that into consideration, I cannot doubt that what the one defendant did in the former suit was really the act of all the four, and that he was in truth, as the registered owner, defending the suit on behalf of them all.

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They now moreover set up an adverse title in their written statement. They say, and they have endeavoured to establish throughout, that they have a lakeraj (rent-free) title to the property.

This point has been found against them; and it being also found that formerly their predecessors in title did pay rent to the plaintiff or to his predecessors in title, it seems to me that the plaintiff's case is completely made out.

I have already said that I think the Court below was wrong upon the point of non-joinder of plaintiffs, and I consider that the plaintiff is entitled to recover the property in question. There appears to be no claim made here for mesne profits.

The judgment of the lower Courts will therefore be reversed, and the plaintiff will have his costs in all the Courts.

In accordance with this decision the appeal No. 2142, which is a cross appeal by the defendants, will be decided in favor of the plaintiff.

That appeal will, therefore, be dismissed with costs.

Appeal allowed.

Cross appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Wilkinson.

LAL BAHADOOR SINGH AND OTHERS (PLAINTIFFS) *v.* E. SOLANO AND ANOTHER (DEFENDANTS).*

1883 *May* 21.

Right of Occupancy, Acquisition of—Occupation by ryot as Malik—Rent Act (Beng. Act VIII of 1869), s. 6.

It is only the holding of the father or other person from whom a ryot inherits that can be deemed to be the holding of the ryot within the meaning of s. 6 of the Rent Act. Occupation by the predecessor in title is not such an occupation as will create in the holder of land any right of occupancy. Nor can the period during which the occupant of land is in possession as malik be included in considering whether he has acquired a right of occupancy; such a right must be acquired against somebody, and cannot be acquired by a man against himself.

* Appeal from Appellate Decree No. 883 of 1882, against the decree of J. Tweedie, Esq., Judge of Shahabad, dated the 28th February 1882, affirming the decree of Baboo Ram Persad, Subordinate Judge of that district, dated the 27th December 1879.