Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Oldfield.

1886
August 11.

PROSONNO MAI DEBI (PLAINTIFF) *v.* MANSA (DEFENDANT).*

Landholder and tenant—Suit by landholder for removal of trees planted by tenant—Jurisdiction—Civil and Revenue Courts—Act XII of 1881 *(N.-W. P. Rent Act), s.* 93 *(b), (c), (cc).*

Held that a suit by a landholder against his tenant for the removal of certain trees planted by the latter on land let to him for cultivating purposes by the former did not fall within s. 93 of the N.-W. P. Rent Act (XII of 1881), and was cognizable by the Civil Courts. *Deodat Tewari* v. *Gopi Misr* (1) questioned.

THE plaintiff in this case sued the defendant for the removal of certain trees planted by the latter on land let to him for cultivating purposes by the former. Both the lower Courts held that the Civil Courts were debarred from taking cognizance of the suit by the provisions of s. 93 of Act XII of 1881 (N.-W. P. Rent Act), inasmuch as the matter in dispute was one in which a suit of the nature mentioned in clauses (*b*), (*c*), or (*cc*), of that section might be brought in the Revenue Court. The lower appellate Court relied on *Deodat Tewari* v. *Gopi Misr* (1).

In second appeal the plaintiff contended that the lower Courts erred in holding that the Civil Courts were not competent to entertain the suit.

Babu *Jogindro Nath Chaudhri*, for the appellant.

Lala *Datti Lal*, for the respondent.

EDGE, C.J.—I am of opinion that this case must be remanded to the Court of first instance, to be tried and disposed of according to law. I think the lower Court has taken an incorrect view of the effect and scope of s. 93 of the Rent Act. This suit was not one for ejectment; it was a suit brought by a landlord who, so far as appears, was not asking for the ejectment of his tenant, but was seeking to compel him to remove trees which, we must assume for the purposes of the present case, the plaintiff was in a position to show had been planted upon land contrary to custom or the terms of the tenure. Now, with all due deference to the opinion of the Judges who decided the case of *Deodat Tewari* v. *Gopi Misr* (1), I have

* Second Appeal No. 125 of 1886, from a decree of F. E. Elliot, Esq., District Judge of Allahabad, dated the 19th November, 1885, confirming a decree of T. R. Wyer, Esq., Judge of the Small Cause Court at Allahabad, exercising the powers of a Subordinate Judge, dated the 11th June, 1885.

(1) Weekly Notes, 1882, p. 102.

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much doubt whether in that case I should have come to the same conclusion. It might possibly be said that this was a suit to prohibit an act or breach mentioned in cl. (*cc*) of s. 93 of the Rent Act. The suit, however, is one to obtain a mandatory injunction not to prohibit a person from planting trees, but to uproot trees which have already been planted. Without expressing any view on the merits, I would remand the case to the first Court under s. 562 of the Code.

The defendant must bear the costs of the litigation hitherto, for he has prevented the plaintiff from having had his suit tried, and has put him to the cost of going to the Judge and coming to this Court.

OLDFIELD, J.—I am entirely of the same opinion.

Case remanded.

1886
September 13.

Before Sir John Edge, Kt., Chief Justice.

AMIR HASAN (DECREE-HOLDER) *v.* AHMAD ALI (JUDGMENT-DEBTOR).*

Civil Procedure Code, ss. 545, 546, 647—*Execution of decree—Review of judgment—Stay of execution pending application for review—Jurisdiction—Civil Procedure Code, s.* 623—"*Any other sufficient reason.*"

S. 647 of the Civil Procedure Code provides for the procedure to be followed in miscellaneous matters other than suits and appeals, and its provisions, read with ss. 545 and 546, give no power to the Court or a Judge, after the passing of a final unappealable decree, and before the granting of an application for review of judgment, to order a stay of execution of the decree. No such power exists under the Code.

S. 623 gives a more extensive right of review than existed in England, where a review could only be obtained by showing that there was apparent on the record error in law, or that new and relevant matter had been discovered after the judgment which could not possibly have been used when the judgment was given, or that judgment was obtained by fraud. The words "or for any other sufficient reason" mean that the reason must be one sufficient to the Court or Judge to whom the application for review is made, and they cannot be held to be limited to the discovery of new and important matter or evidence, or the occurring of a mistake or error apparent on the record. Whether or not there is in such cases "any other sufficient reason" may depend on a question of law, or a question of fact, or a mixed question of law and fact. *Reasut Hosein* v. *Hadjee Abdoollah* (1) referred to.

In cases where a stay of execution or an injunction is granted on an *ex-parte* application, liberty to apply to the Judge to vary or set aside his order must be implied, if not expressed. *Fritz* v. *Hobson* (2) referred to.

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* Application for review of an order of Sir John Edge, Kt., Chief Justice, dated the 28th August, 1886.

(1) L. R., 3 Ind. Ap. 221. (2) L. R., 14 Ch. Div. 542.