

did not refer to section 317 of the Code of Civil Procedure, he evidently based his opinion on what he considered to be the meaning of that section. In our opinion the view taken by the learned Judge was erroneous and was not warranted by the provisions of section 317. That section forbids a suit by a person claiming to be the beneficial owner against the certified purchaser except on the ground of fraud. There can be no doubt that the section contemplates a suit between the certified purchaser and the person claiming to be the beneficial owner, and not a suit like the present, in which a third party asserts that the certified purchaser was not the beneficial owner. This was the view taken by this Court in *Sohnu Lal v. Lall Gya Pershad* (1), which was followed in *Puran Mal v. Abi Khan* (2). The same view was held by the High Court of Calcutta in *Subha Bibi v. Hara Lal Das* (3). We allow the appeal, and, setting aside the decree of the lower appellate Court, remand the case to that Court under section 562 of the Code of Civil Procedure with directions to readmit the appeal under its original number in the register and to determine it according to law. Costs to abide the result.

Appeal decreed and remanded.

Before Mr. Justice Banerji and Mr. Justice Aikman.

SARJU PRASAD (PLAINTIFF) v. HAIDAR KHAN (DEFENDANT).*

Act No. XII of 1881 (North-Western Provinces Rent Act), section 189—

Appeal—Rent payable by the tenant not in issue in the appeal.

Under section 189 of Act No. XII of 1881, an appeal lies in a suit under section 93 of the Act, where the rent payable by the tenant *has been* a matter in issue and has been determined. It is not necessary that the rent payable by the tenant should be a matter in issue in the appeal.

THIS was a suit under section 93 (a) of Act No. XII of 1881 to recover from a tenant rent of an agricultural holding for the years 1300 and 1301 Fasli. The holding was one at fixed rates. The defendant denied that any rent was due from him,

* Second appeal No. 223 of 1895, from a decree of F. W. Wells, Esq., District Judge of Ghazipur, dated the 23rd January 1895, reversing a decree of J. McC. Wright, Esq., Collector of Ballia, dated the 20th August 1894.

(1) N.-W. P. H. C., Rep., 1874, p. 265.

(2) I. L. R., 1 All., 285.

(3) I. L. R., 21 Calc., 519.

1896

SARJU
PRASAD
v.
HAIDAR
KHAN.

and he also pleaded that the rate of rent as stated in the plaint was wrong.

The Court of first instance (Assistant Collector) found that the rate of rent was as stated by the defendant and not as stated by the plaintiff, and as to payment that the defendant had paid rent in respect of one of the years for which rent was claimed, but not in respect of the second year.

The defendant appealed and his appeal was dismissed by the Collector.

Thereupon the defendant further appealed to the District Judge, who allowed the appeal and dismissed the suit with costs in all Courts.

From this decree the plaintiff appealed to the High Court; mainly on the ground that no appeal lay to the Court below. Neither in the appeal to the District Judge nor in the appeal to the High Court was the issue as to the rate of rent payable by the defendant again raised.

Mr. T. Conlan for the appellant.

Munshi Madho Prasad for the respondent.

BANERJI and AIKMAN, JJ.—The only question which arises in this appeal is whether an appeal lay to the District Judge from the decree of the Collector. The suit was one for arrears of rent and the amount claimed was below Rs. 100. In the suit the question of the rent payable by the tenant, that is, of the rate of rent, was in issue, and there was a further question as to payments made by the tenant. Both these questions were determined by the Court of first instance. The issue as to the rate of rent was decided against the landlord and that as to payments was determined against the tenant. The landlord submitted to the judgment of the Court of first instance. It was the tenant only who appealed, and his appeal had reference to the question of the payments alleged by him and disallowed by the Court of first instance. Now what we have to determine in this appeal is, whether under the provisions of section 189 of Act No. XII of 1881 the tenant could appeal to the District Judge from the decree made against him

We have to construe the section as it exists in the Act. The section provides that an appeal shall lie from a decision of a Collector of the District or Assistant Collector of the first class in all suits mentioned in section 93 in which "the rent payable by the tenant has been a matter in issue and has been determined." The appeal is not limited to the question of the rate of rent, but it is given in every suit in which that question having been in issue has been determined. In this case the question of the rate of rent was in issue in the Court of first instance and was determined by that Court, consequently the condition necessary to give a right of appeal under the section was fulfilled. It is true that, had no question arisen in the Court of first instance as to the rate of rent, there could have been no appeal on the question of payment, but we have to construe the section as we find it. As, according to the language used in section 189, an appeal lies in every suit in which the question of the rent payable by a tenant has been in issue and has been determined, an appeal lay in this case to the District Judge. The point taken here cannot therefore be sustained. We dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1896
July 6.

Before Mr. Justice Blair and Mr. Justice Banerji.

FARZAND ALI (APPLICANT) v. HANUMAN PRASAD (OPPOSITE PARTY.)

*Criminal Procedure Code, section 191(c)—Act No. X of 1872, section 140(c)
—Complaint—By whom a complaint of an offence may be made.*

The complaint upon which under section 191(c) of the Code of Criminal Procedure a Magistrate may take cognizance of an offence may be made by any member of the public acquainted with the facts of the case, not necessarily by the person aggrieved by the offence to which the complaint relates. *In re Ganesh Narayan Sathe* (1) followed.

THE facts of this case sufficiently appear from the judgment of the Court.

(1) I. L. R., 13 Bom., 600.