

1897

BALKISHAN

DAS

v.

W. F.

LEGG.

would be payable "in a year without interest" (see appellant's book, p. 31). But we are unable to agree with the learned counsel for the respondent that there was a novation of the original contract and that no further interest was payable on the sum of Rs. 5,953-2-3. In our opinion the plaintiff would not have been liable to pay interest had he made the payment within one year. But as he failed to do so, the defendants are entitled to obtain interest on that amount in accordance with the terms of the deed of the 6th of April, 1873. In this respect the decree of the Court below should in our judgment be varied.

The appellants in their petition of appeal raised a plea to the effect that they were entitled to compensation for improvements. Their learned counsel, Mr. *Conlan*, conceded that no evidence had been adduced to prove improvements. The appellants are not, therefore, entitled to obtain any compensation on account of improvements.

The result is that we vary the decree below by setting aside that portion of it which directs that the amount of arrears due by tenants should be assessed in execution proceedings, and by awarding further interest on Rs. 5,953-2-3, referred to above, at the rate of 12 per cent. per annum from the 1st of March, 1876, to the date hereinafter mentioned or the date of payment, if payment be made on an earlier date. We direct the parties to pay and receive the costs of the litigation in proportion to their failure and success. We extend the time for the payment of the mortgage money to the 31st of July, 1897, and in other respects we affirm the decree below.

Decree modified.

1897

April 24.

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

BHUJBAL AND ANOTHER (DEPENDANTS) v. NANHEJU (PLAINTIFF).*

Landlord and tenant—Suit for rent of land in Gwalior, defendant being resident in British India—Jurisdiction—Place where defendant resides.

Held that a suit by a lessor against his lessee to recover rent which had accrued due in respect of agricultural land situated in Gwalior, the plaintiff being a subject of the Gwalior state, but the defendant a British subject

* Miscellaneous No. 153 of 1896.

resident in the district of Jhansi, was properly brought in a Civil Court in the district of Jhansi. *Gurdayal Singh v. The Raja of Faridkot* (1) referred to.

THIS was a suit to recover arrears of rent due on account of certain agricultural land situated in the state of Gwalior. The plaintiff was a subject of the Gwalior state. The defendants were subjects of the Queen-Empress and resided in the district of Jhansi. The contract was made in Gwalior. The suit was brought in the Court of the Munsif of Jhansi. The question whether the suit was cognizable in the Court in which it was brought was raised before the Munsif, who decided it in favour of the plaintiff with reference to section 17 of the Code of Civil Procedure. The defendants appealed to the District Judge, who, by desire of both the parties, referred the question as to the jurisdiction of the Court to the High Court under section 617 of the Code of Civil Procedure.

On this reference the following order was passed:—

Pandit *Madan Mohan Malaviya* and *Babu Satish Chandar Mukerji*, for the appellants.

Mr. *H. C. Niblett*, for the respondents.

EDGE, C. J. and BLAIR, J.—This is a reference from the District Judge of Jhansi. The plaintiff is a resident of Gwalior and a subject of that State. The defendant is a subject of Her Majesty the Queen, living within the jurisdiction of the Court of the District Judge of Jhansi. The plaintiff brought the suit in which this reference is made for a decree for rent which had accrued due in respect of land let by the plaintiff to the defendant in Gwalior territory. The District Judge desires to be instructed as to whether or not the suit is maintainable in British territory.

The suit being one for rent which had accrued due, and the parties being the parties between whom the contract was made for the letting and for the payment of rent, the suit in our opinion, lay in the Jhansi Court, within the jurisdiction of which the defendant was living. A suit for rent as between lessor and lessee, whether the lease is determined or not, and a suit for the use and occupation

1897

BHUJBAI
v.
NANHEJU.

of land, was not treated in England as a suit having a local venue. See, article "Action" in volume 1 of Tomlin's Law Dictionary. The case would consequently come within the decision of their Lordships of the Privy Council in *Gurdayal Singh v. The Raja of Faridkot* (1). With this reply the record will be returned to the District Judge.

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

DUKHNA KUNWAR AND OTHERS (DEFENDANTS) v. UNKAR PANDE
(PLAINTIFF).*

1897

April 27.

*Act No. XII of 1881 (North-Western Provinces Rent Act) section 95(n)—
Act No. XLX of 1873 (North-Western Provinces Land Revenue Act)
section 64—Civil and Revenue Courts—Jurisdiction—Jurisdiction of
Civil Courts where no remedy open to plaintiff in the Revenue Courts.*

A plaintiff brought his suit in a Civil Court alleging that he was entitled to the possession of certain land as a tenant at fixed rates, and that in consequence of the order of a settlement officer he had been dispossessed by certain persons, alleged by him to be trespassers without title, whom he made defendants together with the zamindar of the land in dispute.

Held that, inasmuch as the plaintiff could under the circumstances indicated in his plaint have obtained no relief from a Court of Revenue, the Civil Court was competent to entertain the suit and to give the plaintiff a decree for possession as against the defendants, other than the zamindar, who were found to be trespassers, notwithstanding that the Civil Court could not declare what was the nature of the plaintiff's tenancy. *Tarapat Ojha v. Ram Ratan* (2) and *Ajudhia Rai v. Parmeshar Rai* (3) distinguished.

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

Mr. J. E. Howard, for the appellants.

Mr. B. E. O'Connor, for the respondent.

EDGE, C. J. and BLAIR, J.—In this suit the plaintiff claimed a declaration that he was a tenant at fixed rates and he claimed possession. The defendants to the suit parties No. 1 claim possession as the occupancy tenants, and others of the defendants claim title under them, and one defendant was the zamindar.

* Second Appeal No. 1088 of 1894, from a decree of R. Greeven, Esq., Officiating District Judge of Gházipur, dated the 15th September 1894 reversing a decree of Pandit Bansidhar, Subordinate Judge of Gházipur, dated the 17th March 1893.

(1) I. L. R., 22 Calc. 222.

(2) I. L. R., 15 All., 387.

(3) I. L. R., 18 All., 340.