

*Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burkitt.*

KISHEN SAHAI (DEPENDANT) v. BAKHTAWAR SINGH AND OTHERS  
(PLAINTIFFS).\*

1898  
January 19.

*Suit to recover compensation in respect of property sold under a decree  
—Decree not reversed or superseded.*

A zamindár applied to a revenue officer to commute the rent hitherto paid in kind by certain of his tenants to a fixed money rent to be paid in future. The Assistant Collector made the order asked for and fixed the money rent to be paid in future. After that order had been made the zamindár brought a suit for arrears of rent against the tenants in a Court of Revenue and obtained a decree for rent at the rate which had been fixed by the order of the Assistant Collector. Against this decree the tenants did not appeal, and it became final. The decree was put into execution: property of the tenants was attached and sold, and the decree was partially satisfied out of the sale proceeds. Subsequently to the passing of the decree for rent the Board of Revenue set aside the order of the Assistant Collector commuting the rent in kind to a fixed money rent. The tenants thereupon sued to recover compensation on account of the sale of their property under the decree for rent.

*Held* that the suit would not lie, inasmuch as the decree for rent under which the plaintiff's property was sold was unreversed and not superseded by any competent Court. *Marriot v. Hampton* (1); *Shama Parshad Roy Chowdhery v. Hurro Parshad Roy Chowdhery* (2); *Jogesh Chunder Dutt v. Kali Churn Dutt* (3) and *Raja Nilanay Singh Deo Bahadur v. Sharoda Parshad Mookerjee* (4) referred to.

THE facts of this case are as follows:—

The plaintiffs were occupancy tenants of the defendants of some 20 bighas and 6 biswas of land in the town of Meerut. The plaintiffs used to pay their rent in kind. The defendant sued them for enhancement of rent (describing his suit as one for determination of the rent payable by the plaintiffs) and got a decree on the 13th of September 1889. This decree was set aside by the Board of Revenue on appeal on the 14th of October 1890. Between the 13th of September 1889 and the 14th of October 1890 the defendant sued the plaintiffs for rent at the enhanced rate allowed by the decree of the 13th of September 1889 and got

\* First Appeal No. 78 of 1897, from an order of Babu Jai Lal, officiating Subordinate Judge of Meerut, dated the 15th July 1897.

(1) 7 T. R., 269; s. c., 2 Smith L. C., 409, 10th Ed. (3) I. L. R., 3 Calc., 30.  
(2) 10 Moo. I. A., 203. (4) 18 W. R., C. R., 434.

1898

---

KISHEN  
SARAI  
v.  
BAKHTAWAR  
SINGH.

a decree for Rs. 1,960-2-0 on the 18th June 1890. Notwithstanding the order of the Board of Revenue of the 14th of October 1890, the defendant executed his decree for rent and realized Rs. 1,010.

The plaintiffs sued for cancelment of the decree of the 18th of June 1890 and the case went up to the Board of Revenue on appeal. The Board held that the decree of the 18th of June 1890 could not be cancelled by them and directed the plaintiffs to seek their remedy in the Civil Court. The plaintiffs accordingly brought a suit for a declaration that the decree of the 18th of June was incapable of execution ; but their suit was dismissed by the Subordinate Judge on the 28th of September 1893.

The plaintiffs thereupon brought the present suit in which they claimed to recover the amount realized in execution of the decree of the 18th of June 1890 on the allegation that the said decree had been superseded by the order of the Board of Revenue of the 14th of October 1890.

The defendant pleaded, *inter alia*, that the decree in question was still subsisting and that therefore the defendant could not recover any thing realized under it.

On this issue the Court of first instance (Munsif of Meerut) found that the decree in favour of the defendant for rent at the enhanced rate had not been set aside, and dismissed the plaintiffs' suit.

On appeal by the plaintiffs the lower appellate Court (Subordinate Judge of Meerut) found that the "main decree of the 13th of September 1889 being reversed by the Board of Revenue and that being the basis of the decree of the 18th of June 1890, this latter decree being a dependent decree must be taken as superseded." The Subordinate Judge accordingly set aside the decree of the Munsif and made an order of remand under section 562 of the Code of Civil Procedure. From this order the defendant appealed to the High Court.

Pandit *Moti Lal*, for the appellant.

Pandit *Sunder Lal*, for the respondents.

EDGE, C. J., and BURKITT, J.—The plaintiffs, who are respondents here, brought their suit against their landlord, who was the zamíndár, the appellant here, to recover compensation for their property which was sold in execution of a decree for rent made by a competent Court. The first Court dismissed the suit, holding that the suit did not lie. The Court of first appeal set aside the decree of the first Court and made an order of remand under section 562 of the Code of Civil Procedure. From that order this appeal has been brought.

The facts of this case are these :—The zamíndár applied to a revenue officer to commute the rent theretofore paid by these plaintiffs as his tenants in kind to a fixed money rent to be paid in future. The Assistant Collector made the order, and fixed the money rent to be paid in future. After that order had been made, the zamíndár brought a suit for arrears of rent against his tenants, these plaintiffs, in the Court of Revenue and obtained a decree for rent at the rate which had been fixed by the order of the Assistant Collector. That decree was put in execution; property of these plaintiffs appellants was attached and sold, and the decree was partially satisfied out of the sale proceeds. This suit is brought to recover the money so realized, the Board of Revenue having, before the commencement of this suit and subsequently to the passing of the decree for rent, set aside the order commuting the rent in kind into a fixed money rent.

For the defendant appellant reliance has been placed on the principle of the decision in *Marriot v. Hampton* (1), and it has been contended that, as the Board of Revenue had not jurisdiction to interfere in appeal or otherwise with the decree for rent, the decision of their Lordships of the Privy Council in *Shama Parshad Roy Chowdhery v. Hurro Parshad Roy Chowdhery* (2), the decision of the majority of the Full Bench of the High Court at Calcutta in *Jogesh Chunder Dutt v. Kali Churn Dutt* (3) and of the Calcutta Court in *Raja Nilmoney Singh Deo Bahadoor v.*

1898

---

KISHEN  
SAHAI  
v.  
BAHHTAWAR  
SINGH.

(1) 7 T. R. 269; s. c. 2 Smith L. C. 409, 10th Ed. (2) 10 Moo. I. A., 203.

(3) I. L. R., 3 Calc., 30.

1898

---

KISHEN  
SAHAI  
v.  
BAKHTAWAR  
SINGH.

*Shuroda Parshad Mookerjee* (1) did not apply, as in all these cases the Court which passed a subsequent decree, which had the effect of reversing or superseding the decree under which the money was paid which was sought to be recovered, had jurisdiction over the suit in which such last mentioned decree was made.

On the other hand for the plaintiffs respondents it has been contended that the setting aside in revision by the Board of Revenue of the order of the Assistant Collector commuting the rent in kind into a fixed money rent had the effect of superseding the decree for rent of the Court of Revenue, as that decree was based on the order of the Assistant Collector commuting the rent.

As a matter of fact it is questionable whether in this case the Assistant Collector had any jurisdiction to make his order commuting the rent in kind to a fixed money rent. The Board of Revenue had absolute jurisdiction in revision over that order of the Assistant Collector. The decree for rent made by the Court of Revenue being for a sum exceeding Rs. 100 was one over which the Board of Revenue had no jurisdiction of any kind, and was one the appeal from which lay exclusively to the District Judge. No appeal in fact was made from the decree for rent. It appears to us that their Lordships of the Privy Council, in the case which was before them and to which we have referred, when speaking of a decree being reversed or superseded, were, as to reversal certainly, speaking of reversal by a competent Court, and as to supersession were referring to such supersession as had taken place in the case before them. That was a case in which the money sought to be recovered had been paid under decrees which were based solely on a decree between the same parties which was subsequently reversed by their Lordships of the Privy Council. We think the supersession to which their Lordships were referring must have been a superseding by a decree of a Court which had competent jurisdiction to reverse the decree under which the money had been paid, if it had been brought before them. It is quite plain to our minds that if there had been no order made

at all for a commutation of the rent in kind into a fixed money rent, but a Court of Revenue had erroneously made a decree for a money rent and that decree was executed and was not reversed in appeal or superseded by a Court competent to reverse it, a tenant whose goods had been sold in execution of such decree for rent or who had satisfied that decree by payment, could not recover so long as the decree for rent was not reversed or superseded by a Court competent in that respect. The defendants had a remedy against this decree for rent, and that was by appealing. Of that remedy they did not avail themselves, and it may be observed that, as the Assistant Collector apparently acted without jurisdiction in making his order of commutation, the defendants had a good ground of appeal. The fact that the order of the Board of Revenue in revision set aside the order of the Assistant Collector commuting the rent cannot, in our opinion, put the plaintiffs in a better position than they would have been in, if, as we think is probable, the Assistant Collector had no jurisdiction to make the order of commutation. In our opinion, as the decree of the Court of Revenue stands unreversed and not superseded by a competent Court, this suit must fail. We allow this appeal with costs in this Court and in the Court below, and, setting aside the order under appeal we dismiss the appeal to the Court of first appeal and restore and affirm the decree of the first Court.

*Appeal decreed.*

*Before Mr. Justice Aikman.*

DAULAT RAM (DEPENDANT) v. ANWAR HUSEN (PLAINTIFF)\*

*Jurisdiction—Civil and Revenue Courts—Suit to set aside, on the ground of duress, an agreement by an ex-zamindar for surrender of his sir land.*

On the sale of a village the vendor covenanted with the vendee to hold his *sir* land as a tenant of the vendee for a certain term and then to surrender it to the vendee. *Held* that there was nothing to preclude the vendee from suing in a Civil Court for a declaration that the said agreement was void and

1898

KISHEN  
SAHAI  
v.  
BAKHTAWAR  
SINGH.

1898

January 19.

Second Appeal No. 969 of 1896, from a decree of T. E. Piggott, Esq., Additional Judge of Aligarh, dated the 5th September 1896, modifying a decree of Munshi Achal Behari, Munsif of Etah, dated the 13th December 1895.