

distinctly that the claimant here is a trustee for the judgment-debtor; he merely finds a state of facts from which we are asked to infer that he intended so to find. I do not think that we ought to draw that inference from those facts, and, therefore, we think that he was wrong in the conclusion to which he came, and that this rule must be made absolute with costs.

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HAMID
BAKHUT
MOZUMDAR
v.
BUKTEAR
CHAND
MAHTO.

T. A. P.

Rule absolute.

Before Mr. Justice Tottenham and Mr. Justice Norris.

MOHESHWAR PERSHAD NARAIN SINGH (PLAINTIFF) v. SHEOBARAN MAHTO (DEFENDANT)

1887
May 25.

AND

MOHESHWAR PERSHAD NARAIN SINGH (PLAINTIFF) v. DURSUN RAUT AND OTHERS (DEFENDANTS).^a

Right of occupancy—Agreement restricting right of occupancy—The Bengal Tenancy Act (Act VIII of 1885), s. 178, Applicability of, to suits pending when Act came into force.

Section 178 of the Bengal Tenancy Act (Act VIII of 1885) has no application to suits instituted before the date on which that Act came into force.

So where a landlord sued to eject a tenant who had executed a *solenamah* agreeing to hold the land in suit for a specified period at a specified rent, and providing that the landlord was to be at liberty to enter on the lands at the expiry of the period, and the suit was instituted on the 6th October, 1885, and where it was found that at the date of the *solenamah* the tenant had acquired a right of occupancy with respect to some of the lands in suit: *Held*, that the tenant was not entitled to the benefits conferred by s. 178, cl. 1, sub-clause (b) of the Bengal Tenancy Act, but was liable to be ejected.

THE suits which gave rise to these three appeals were instituted on the 6th October, 1885, and their object was to eject the defendants from certain lands in their possession.

It was alleged by the plaintiff that the defendants held their lands under the terms of a *solenamah*, dated the 21st September, 1878, from the year 1286 to the year 1290. The *solenamah* contained a stipulation that after the expiry of the term the landlord (the plaintiff in these suits) would be at liberty to enter upon

^a Appeals from Appellate Decrees Nos. 2138, 2139 and 2140 of 1886, against the decrees of Baboo Anirto Lall Chatterjee, Subordinate Judge of Sarun, dated the 29th of July, 1886, affirming the decrees of Baboo Harihur Churn, Munsiff of Chupra, dated the 15th of March, 1886.

1887 the lands, and the ryots (the defendants) would not be allowed to cultivate the same without executing a new lease.

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The *solenamah* was alleged to have been made with a view to compromising certain suits then pending for the recovery of arrears of rent. The term covered by the *solenamah* expired in 1290, and as the defendants held over a verbal notice to quit was served and these suits were instituted.

The defendant in appeal No. 2138 admitted the *solenamah*, but the other defendants denied it. All the defendants pleaded limitation, denied notice and its sufficiency, and claimed a right of occupancy. The Munsiff held that the defendants had admittedly held over after the expiry of the term and paid rents to the landlord; that at the time of the *solenamah* the defendants had acquired a right of occupancy in portions of the lands covered by the *solenamah*; and that in consequence, under s. 178, cl. 1, sub-clause (b) of Act VIII of 1885, the *solenamah* taking away that right was invalid. Upon these grounds he dismissed the suits without deciding as to whether the *solenamah* was genuine or not.

The lower Appellate Court found that as regards the defendants in the appeals Nos. 2139 and 2140 the *solenamah* had not been proved and was not genuine, and that even supposing it was genuine, its effect was to take away an occupancy right in existence at the date of its execution, and therefore under s. 178, cl. 1, sub-clause (b) of Act VIII of 1885 it had no application to the case, and that the suit for ejectment did not therefore lie so far as the portion of the lands in which the defendants had a right of occupancy at the date of the *solenamah*. As regards the remainder of the lands in suit the lower Appellate Court held that the defendants were equally protected from ejectment under the provisions of s. 21 of Act VIII of 1885. This decree of the lower Court dismissing the suits was accordingly confirmed.

The plaintiff now appealed to the High Court.

Baboo Durga Dass Dutt for the appellant.

Baboo Benode Behari Mookerjee for the respondent in appeal No. 2138.

Mr. C. Gregory for the respondents in appeals Nos. 2139 and 2140.

The judgment of the High Court (TOTTENHAM and NORRIS, JJ.) was as follows :—

These three appeals arise out of suits to eject the defendants upon the ground that the period of their holding had expired. The plaintiff's case was based upon an alleged *solenamah* or agreement entered into between the plaintiff on the one hand and several ryots on the other in previous suits. The previous suits were for arrears of rent, and a dispute arose as to the amount of the jumma. In those suits a petition was put in by the plaintiff on the one hand, and it is said that there was a corresponding petition on the other side, agreeing to a particular rate of rent and agreeing between the parties that the ryots should hold a certain specified area for a term of five years at a given jumma. The term having expired the plaintiff sued to eject. In the first case before us, namely, appeal from Appellate decree No. 2138 of 1886, the defendant in the lower Court admitted that he executed this *solenamah*; and we think that as he did so it is now impossible for him to escape the effect of it. The lower Courts gave him the benefit of s. 178 of the Bengal Tenancy Act, which provides that "nothing in any contract between a landlord and a tenant made before or after the passing of this Act shall take away an occupancy right in existence at the date of the contract." The Court considered that, as regards a certain portion of the land in question, these defendants had acquired occupancy rights before the alleged *solenamah* was executed. We think, however, that in this suit, which commenced before the new Tenancy Act came into force, the tenant cannot get the benefit of s. 178. We think that the point to be looked to was, what was the right of the tenant at the time that the suit was brought. At the time the suit was brought there was nothing to prevent his contracting himself out of his rights. That being so we think that in the appeal from Appellate decree No. 2138 of 1886 the plaintiff is entitled to succeed. That appeal therefore will be allowed with costs in all the Courts.

But as regards the other two appeals, Nos. 2139 and 2140 of 1886, the defendants in the lower Courts repudiated the alleged *solenamah* and denied having been parties to it. And the Courts found as a fact that they were not parties.

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v.
SHEOBARAN
MAHTO.

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v.
SHROBARAN
MAHTO.

For the appellant it was contended that the *solenamah* had been confirmed by a decree. A copy of the judgment in the case in which the *solenamah* was filed has been put in, but no copy of the decree is produced. We think therefore that the lower Appellate Court was justified in holding upon the evidence that the defendants in these two cases were not parties to the *solenamah*; and when it was found that they had rights of occupancy certainly in respect of some portion of their holding, the Court below was right in dismissing the suit to eject them.

These two appeals are dismissed with costs.

H. T. H.

Appeal No. 2138 allowed.

Appeals Nos. 2139 and 2140 dismissed.

1887
June 29.

Before Mr. Justice Tottenham and Mr. Justice Norris.

BASARUT ALI AND OTHERS (1ST PARTY DEFENDANTS) v. ALTAF HOSAIN
(PLAINTIFF)*

Bengal Act VIII of 1869, s. 27—Limitation—Suit for possession—Question of title.

Where the plaintiff alleged that he was the holder of a jote under the defendant by whom he had been forcibly dispossessed, and sued for a declaration of his title and for recovery of possession claiming a right of occupancy, and the defendant, while admitting that the plaintiff had for one or two years been a tenant of a small portion of the land in suit denied his title to the remainder, or that he had acquired a right of occupancy :

Held, that the suit was one to try a *bond fide* question of title, and that it was not barred by one year's limitation under s. 27 of Bengal Act VIII of 1869, but was maintainable within 12 years from the date of the cause of action. *Srinath Bhattacharji v. Ram Ratan De* (1) distinguished.

THE plaintiff sued for possession of 10 bighas of land and for a declaration of his right thereto, alleging that it was his gorabundi ancestral jote. He alleged that he had been dispossessed by the principal defendants on the 6th Sawan 1291 F.

*Appeal from Appellate Decree No. 2399 of 1886, against the decree of W. Verner, Esq., Judge of Bhagulpore, dated the 24th of September, 1886, affirming the decree of Baboo Bemola Churn Mozoomdar, Munsiff of Jamai, dated the 25th of January, 1886.

(1) I. L. R., 12 Cal., 606.