

Smith puts it, if the plaintiff is suing for another, security is required. 1887

The real question is whether the plaintiff is suing for himself or for another. In this case the plaintiff has a substantial interest in the suit, and, as far as I can see, the suit has been instituted by him on his own behalf. I must on the affidavits find this as a fact, and I must hold that this suit is really the plaintiff's suit, and that his name is not used by others for their own purposes. He is, I think, suing for himself and not for any one else.

The application must be dismissed with costs.

T. A. P.

Application dismissed.

Attorney for plaintiff: Mr. Temple.

Attorneys for defendant: Messrs. Watkins & Co.

KHAJAH
ASSENOOLLA-
JOO
v.
SOLOMON.

CIVIL REFERENCE.

Before Mr. Justice Tottenham and Mr. Justice Norris.

JAGADAMBA DEVI (PLAINTIFF) v. PROTAP GHOSE AND OTHERS
(DEFENDANTS).*

1887
May 21.

Bengal Tenancy Act (Act VIII of 1885), s. 149—Suit by third party claiming rent paid into Court in rent suit, Nature of—Title Suit—Institution Stamp.

A suit by a third person under clause (3) of s. 149 of the Bengal Tenancy Act is not a title suit and need not be stamped as such.

Per TOTTENHAM, J.—Such suit is in the nature of a suit for an injunction under the Specific Relief Act or else a declaratory suit.

THIS case was referred by the District Judge of Birbhum under the provisions of s. 617 of the Civil Procedure Code for the decision of the High Court.

The facts were as follow: In a suit for rent by one Rash Bihari Mitra against Protap Ghose and Bishun Laha before the Munsiff of Dubrajpore, the defendants alleging that the rent claimed, namely Rs. 2-11-6, was due to one Jagadamba Devi, paid it into Court under the first clause of s. 149 of the Bengal Tenancy Act (Act VIII of 1885).

Notice under the second clause of that section having been served on Jagadamba Devi she filed a suit within three months

* Civil Reference No. 5A of 1887, made by J. Whitmore, Esq., Judge of Birbhum, dated the 31st of March, 1887.

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against all the parties to the rent suit, in which she claimed the amount deposited and a further amount of As. 8, which she alleged to have fallen due subsequent to the period covered by the rent suit.

The Munsiff, considering that the "suit" referred to in the third para. of s. 147 of the Act was a "title suit," ordered Jagadamba Devi's plaint to be returned in order that it might be so amended as to render it a plaint in a title suit, and the Court fee increased accordingly.

Jagadamba Devi did not comply with that order but filed a petition contesting the Munsiff's view of the law. The Munsiff then directed that, in accordance with his previous order, the plaint should be returned to the petitioner in order that it might be filed within four days, with a stamp calculated on the valuation of the suit regarded as a "title suit." This order was dated 12th January, 1887.

Instead, however, of complying with such order, Jagadamba Devi filed an appeal against it. The District Judge in referring the case stated that, in so far as the Court-fee was concerned, he did not think that any right of appeal existed as there was no "order of rejection." But that, so far as the order was to be regarded as an order returning the plaint for amendment, an appeal would lie to him under clause (b) of s. 588 of the Civil Procedure Code, and in his letter of reference he stated his reason for referring the case as follows :

"In order to decide it I must determine of what nature the suit contemplated by s. 149 (3), Bengal Tenancy Act, is, whether, *e.g.*, it is (a) a suit to declare the plaintiff's right to receive the particular sum deposited, or (b) a suit to declare the plaintiff's title as landlord as against the plaintiff in the rent suit in respect of the lands comprising the holding, the rent of which was sued for therein.

"There is, I believe, no express authority on the subject; but I should be disposed to think that, as the question to be tried is one of title, the consequential relief should be calculated rather on the value of the land than upon a year or two's rent.

"But the point is new, not free from doubt, and likely to

recur very frequently. I would, therefore, solicit the opinion of the Honorable Court on the following question: 'Of what nature is the suit contemplated by s. 149 (3), Bengal Tenancy Act, and how should it be valued?'

"I should add that, although exception might perhaps be taken to Jagadamba Devi's plaint on the ground of misjoinder, I have refrained from considering the point, as it is not directly before me."

Baboo *Hari Mohun Chuckerabati* appeared on behalf of Jagadamba Devi.

No one appeared for the defendants.

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

TOTTENHAM, J.—The suit in question under s. 149(3) Bengal Tenancy Act, is not a title suit, and need not be stamped as such. It is in the nature of a suit for an injunction under the Specific Relief Act, or else of a declaratory suit.

NORRIS, J.—I agree that the suit in question is not a title suit. I do not think it is necessary to express any opinion as to what sort of suit it is.

H. T. H.

CRIMINAL REFERENCE.

Before Mr. Justice Tottenham and Mr. Justice Ghose.

FEEKOO MAHTO *v.* THE EMPRESS.*

Confession—Confession of an accused person—Evidence, Admissibility of confession in—Question and answer—Memorandum in English by Magistrate—Criminal Procedure Code (Act X of 1882), ss. 164, 364 and 533.

1887
April 21.

It is not necessary that the English memorandum referred to in para. 3 of s. 364 of the Criminal Procedure Code should be made in respect of confessions recorded under s. 164, as the manner in which such a confession is to be recorded under the provisions of that section is fully set out in the first two paras. of s. 364.

A confession of an accused person was recorded before a Deputy Magistrate by one of his clerks, under the provisions of s. 164 of the Criminal

* Criminal Reference No. 8 of 1887, made by, and Appeal No. 163 of 1887 against the order passed by, J. Whitmore, Esq, Sessions Judge of Birbhum, dated the 17th of March, 1887.