

Before Mr. Justice Aikman.

MATHURA DAS AND OTHERS (DEFENDANTS) v. MURLIDHAR

(PLAINTIFF).*

1902
June 23.

Act No. XII of 1881 (N.-W. P. Rent Act), sections 42, 95, 206—Landholder and tenant—Ejectment—Appraisalment of tenant's crops—Assignment of right to receive price of crops—Mode in which such price can be realized—Jurisdiction—Civil and Revenue Courts—Actionable claim—Act No. IV. of 1882, section 135.

A zamindar ejected a tenant, and having done so, caused the value of the tenant's crops standing on the land to be assessed in the manner provided for by section 42 of the N.-W. P. Rent Act. The tenant assigned his right to get the assessed value of the crops from the zamindar to a third person.

Held on suit by the assignee to recover the amount of the assessment—

(1) that the assignee's proper remedy was by suit in a Court of Revenue, and not by application to execute the order awarding compensation; (2) that the suit was not a suit of the nature cognizable by a Court of Small Causes; and (3) that the assignment to the plaintiff after the award had been made was not an assignment of an actionable claim within the meaning of section 135 of Act No. IV of 1882.

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

Pandit *Sundar Lal*, Pandit *Baldeo Ram* and Babu *Devedra Nath Ohdedar*, for the appellants.

Babu *Jogindro Nath Chaudhri* and Pandit *Madan Mohan Malaviya* for whom Babu *Beni Madhub Ghosh*), for the respondent.

AIKMAN, J.—The suit out of which this appeal arises is one of a somewhat peculiar nature. The defendants are the appellants here. They are zamindars of a village. Sultan Ali was a tenant of theirs. They ejected him by proceedings under the Rent Act. At the time of the ejectment there were standing crops on the tenant's holding. The zamindars, wishing to acquire those crops, tendered their price to the tenant. The parties not being able to agree as to the price, the zamindars applied to the Rent Court under cl. (g.) section 95 of Act No. XII of 1881, to determine the value of the crops. The Assistant Collector fixed the value at Rs. 237. Sultan Ali assigned his rights to receive this sum to one Murlidhar, the plaintiff in this suit. Murlidhar, the

* Second Appeal No. 422 of 1901 from a decree of Lala Shankar Lal, Additional Subordinate Judge of Meerut, dated the 31st January 1901, modifying a decree of Maulvi Muhammad Abbas Ali, Munsif of Meerut, dated the 21st of February 1900.

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assignee, brought a suit in the court of the Munsif to recover from the zamindars the amount awarded as the value of the standing crops, together with interest. The lower appellate Court has decreed the greater part of the claim, allowing a small set off on account of rent due to the defendants from the plaintiff's assignor. The defendants come here in second appeal.

A preliminary objection is taken to the hearing of the appeal based upon section 586 of the Code of Civil Procedure, namely, that the suit was one of a nature cognizable in a Court of Small Causes, and the value of the subject-matter did not exceed Rs. 500. In my opinion this preliminary objection must be overruled. Section 42 (c) of Act No. XII of 1881 provides that the amount of an award made by an Assistant Collector under cl. (g), section 95, shall be recoverable as an arrear of rent by suit under that Act. This provision clearly excludes the suit from the cognizance of a Court of Small Causes.

The first plea taken in the memorandum of appeal here is, that the assignee's only remedy was an application to the Revenue Court to execute the order of an Assistant Collector appraising the value of the standing crops. In my opinion this plea cannot be sustained. As has been shown above, the mode provided by the Rent Act for recovery of the amount awarded as the price of the standing crops is not by application to execute the award, but by a suit under the Act. It is true that the suit ought to have been brought in the Revenue Court. But no objection to the jurisdiction of the Munsif having been taken, either before the Munsif or in the lower appellate court, such objection cannot now be entertained, and the appeal must be disposed of as if the suit had been instituted in the right court (*vide* section 206 of Act No. XII of 1881). This disposes of the first plea.

The next plea is, that what the assignee acquired was an actionable claim, and that the defendants are entitled to be discharged by paying to the assignee the price and the incidental expenses of the sale of the claim with interest. This plea is based upon section 135 of the Transfer of Property Act No. IV of 1882. In my opinion this plea likewise fails, having regard to the provisions of cl. (d) of the above mentioned section, which provides that where the judgment of a competent court

has been delivered affirming the claim, the provision as to the discharge of actionable claims does not apply. Here a competent court, namely, the court of the Assistant Collector, has delivered judgment affirming the claim. These are the only two grounds in the memorandum of appeal. I therefore dismiss the appeal with costs.

An objection has been taken by the plaintiff-respondent under the provisions of section 561 of the Code of Civil Procedure, to the set off which has been allowed by the lower appellate Court. That objection is clearly without force. The landholders were entitled to set off "against the price of crops, the amount of the rent payable by the plaintiff's assignor—[*vide* cl. (d), section 42 of the Rent Act.] The result is that I dismiss both the appeal and the objection with costs.

Appeal dismissed.

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Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Knox.

RAM ADHAR AND ANOTHER (JUDGMENT-DEBTORS) v. NARAIN DAS (AUCTION PURCHASER).*

Execution of decree—Objection by judgment-debtor that more had been delivered to the auction-purchaser than was included in his sale certificate—Objection disallowed—Appeal—Civil Procedure Code, section 244.

Certain landed property was put up for sale in execution of a decree. On the property stood a house. After the sale the auction purchaser obtained possession of the house. The judgment-debtors objected that the house should not have been delivered, inasmuch as no mention was made of it in the sale certificate. This objection was disallowed. *Held*, that the order disallowing the judgment-debtor's objection did not fall within section 244 of the Code of Civil Procedure, and was not otherwise appealable. *Mammod v. Locke* (1) and *Hira Lal Chatterji v. Gourmoni Debi* (2) referred to.

IN this case one Ram Shankar, holding a decree against Ram Adhar and another, caused certain land belonging to the judgment-debtors to be sold by auction in execution of his decree. Upon this land there stood a building described as a "dera," and this building was sold with the land, and the auction purchaser, Narain Das, was put in possession. The judgment-debtors filed

* First Appeal No. 15 of 1902 from a decree of Munshi Shiva Sahai, Subordinate Judge of Cawnpore, dated the 16th of October 1901.

(1) (1897) I. L. R., 20 Mad., 487. (2) (1886) I. L. R., 13 Calc., 326.