

Before Mr. Justice Tottenham and Mr. Justice Gordon.

SHEWBARAT KOER (PLAINTIFF) *v.* NIRPAT ROY AND
OTHERS (DEFENDANTS).*

1889
May 15.

Appeal—Superintendence of High Court—Bengal Tenancy Act (VIII of 1885), ss. 104, cl. 2, 105, 106, 108—Rule 33 of the rules made under the Act—Jurisdiction—Record of right—Civil Procedure Code (Act XIV of 1882), ss. 108, 622.

The High Court has no jurisdiction either to entertain a second appeal from, or to interfere under s. 622 of the Code of Civil Procedure with, an order of a Special Judge in regard to settlement of rents.

THE ryots of one Shewbarat Koer who was the proprietor of mouzah Pupri in Mozufferpore, applied, under s. 104, cl. (2) of the Bengal Tenancy Act, for settlement of their rents; and on the 10th July 1886 the Assistant Settlement Officer passed an *ex parte* order settling such rents. On the 20th November 1886 Shewbarat put in a petition to the Assistant Settlement Officer, stating that the rates of rent, as stated in that officer's "Khattian," did not agree either with the rates the ryots had mentioned, or with the rate as appeared in her Sherista. The Assistant Settlement Officer thereupon directed the petitioner to file a detailed list of her ryots, showing the rental paid by them. This was done on the 2nd December 1886. The Assistant Settlement Officer thereupon passed an order, refusing to re-open the case, the rents having been settled under s. 104 of the Tenancy Act.

Shewbarat appealed against this order to the Special Judge who held that the appellant should have applied to the Assistant Settlement Officer under s. 108 of the Civil Procedure Code, and not under s. 105 of the Bengal Tenancy Act of 1885, and dismissed the appeal.

Shewbarat appealed to the High Court.

Baboo *Tarack Nath Palit*, for the appellant, contended that s. 105 of the Tenancy Act and Rule 33 of the rules made under that Act clearly pointed out the remedy in this case.

* Appeal from Appellate Decree No. 1326 of 1888, against the decree of A. C. Brett, Esq., Judge of Tirhoot, dated the 25th of April 1888, affirming the decree of E. W. Collin, Esq., Settlement Officer of Mozufferpore, dated the 1st of March 1887.

Baboo *Sharada Charan Mitter*, for the respondents, submitted that there was no appeal against the order of the Special Judge; the High Court having no jurisdiction to entertain appeals from a Special Judge, save under s. 106 of the Rent Act.

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

It appears to us that in this case the High Court has no jurisdiction either to entertain a second appeal, or to interfere with the order of the District Judge under s. 622 of the Code of Civil Procedure.

The matter in dispute is an entry in the record of rights and of rents settled, made under Chapter X of the Bengal Tenancy Act. The settlement appears to have been made *ex parte*, the Zemindar not having been present. Subsequently the Zemindar objected to the entry, and sought to have it corrected. The Revenue Officer declined to re-open the matter, and the Zemindar appealed against his order (and apparently she had a right to do so) to the District Judge, who is Special Judge under the Tenancy Act. The District Judge held that the only remedy which the Zemindar had was to apply to set aside the *ex parte* order under s. 108 of the Code of Civil Procedure, and he dismissed the appeal. The Zemindar has preferred a second appeal to this Court.

It has been pointed out to us by the respondents' vakil that we have no jurisdiction to entertain this appeal. It appears that the only cases in which the High Court has jurisdiction to entertain appeals from the decisions of a Special Judge are cases under s. 106. Clause 3 of s. 108 of the Rent Act gives the High Court jurisdiction to hear appeals in such cases as if the Special Judge were a Court subordinate to the High Court within the meaning of Chapter XLII of the Code of Civil Procedure. Section 106 provides for the hearing and decision of disputes regarding the record of rights by a Revenue Officer; but that section excludes from a Revenue Officer's consideration disputes regarding the entry of rent settled under the chapter. This entry, therefore, is not such as can be decided or entertained under s. 106; and therefore it appears to us that the High Court has no jurisdiction to hear an appeal from an order of a Special Judge

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in regard to settlement of rent. In respect of that entry, a Special Judge is not a Court subordinate to the High Court; and that being so, we have neither appellate jurisdiction over him, nor any authority under s. 622 of the Code to interfere with his order.

The appeal must, therefore, be dismissed with costs.

T. A. P.

Appeal dismissed.

Before Mr. Justice Tottenham and Mr. Justice Gordon.

NUNDUN LALL (DECREE-HOLDER) v. RAI JOYKISHEN AND OTHERS
 (JUDGMENT-DEBTORS).*

1889
 April 25.

Limitation Act (1877), Art. 179, para. (2)—Appeal against whole decree by one defendant only—Execution of decree—Execution against judgment-debtor who did not appeal.

A plaintiff obtained on the 14th September 1881 a decree against two defendants, the decree as against the first defendant being one for partition; and as against the second defendant (who had set up a julkar right on the lands claimed to be partitioned, and had contended that partition could not be had, and had obtained a partial decree, but had been ordered to pay partial costs to the plaintiff), being one for costs.

The first defendant alone appealed against this decree, but unsuccessfully, his appeal being dismissed on the 18th January 1884. The decree-holder applied for execution of his decree as against the second defendant for cost in December 1886. Held that the application was not barred, for that limitation ran from the 18th January 1884.

NUNDUN LALL, one of the proprietors of mouzah Hosseinpore, which mouzah was, in the year 1881, partitioned by the Collector save and except a portion thereof, measuring 91 bigahs at that time under water. Subsequently the water on this portion dried up, and it became fit for cultivation. Nundun Lall thereupon applied to the Collector for partition of this portion; his application was however rejected on the ground that this land did not form part of the revenue-paying estate of Hosseinpore. Thereupon Nundun Lall brought a regular suit against the Secretary of

* Appeal from Order No. 224 of 1883, against the order of A. C. Brett, Esq., Judge of Tirhoot, dated the 13th of March 1883, reversing the order of Baboo Grish Chunder Chatterjee, Subordinate Judge of that district, dated the 29th. of June 1887.