nued, and the mortgage subsequently effected by the judgment-debtors is consequently void as against the purchaser at the execution sale.

The appeal is dismissed with costs.

H. W. *Appeal dismissed.*

CIVIL REFERENCE.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Rampini

BROJONATH MITTRA (PLAINTIFF) *v.* GOPI SHAKRANI (DEFENDANT.)*

1896 *May* 15.

Provincial Small Cause Courts Act (IX of 1887), section 2, Articles 8 and 13 —Calcutta Municipal Consolidation Act (II of 1888, B. C.), sections 117 and 119—Suit to recover occupier's share of tax by the owner of a bustee—Jurisdiction.

A suit, by the proprietor of a *bustee* land for the recovery of Municipal taxes from the owner of a hut in the *bustee*, is cognizable by the Provincial Small Cause Courts.

THE facts of the case, so far as they are necessary for the purposes of this report, are set out in the following extract from the letter of reference from the Munsif of Alipur, exercising the powers of a Judge of the Court of Small Causes :—

"The defendant in each of these two cases is the owner of a hut situate in *bustee* No. 16/1 Chetla Hât Road, and the plaintiff is the proprietor of the entire *bustee* land. In accordance with the provisions of section 117 of the Calcutta Municipal Consolidation Act (II of 1888, B.C.), the plaintiff, as the proprietor of the *bustee* land, is bound to pay the Municipal taxes assessed on such land. But under section 119 of the same Act he is entitled to recover a portion of such taxes to be paid by him from the owner of the hut, as if it were rent payable to him. Now the question raised in these two cases is whether a suit by the proprietor of the *bustee* land, for recovery of that portion of the consolidated rate which is payable to him by the owner of a hut, lies in the Court of Small Causes. Article 8, Schedule II of the Provincial Small Cause Courts Act provides that a suit for the recovery of rent other than house rent is not maintainable in the Court of Small Causes. The tax payable in respect of a hut in a *bustee* land is not house rent, inasmuch as the hut is built by the tenant himself. It must be looked upon as rent payable in respect of the land occupied by the hut. But plaintiff's pleader in these two cases stated that his client used to bring suits for the

* Civil Reference No. 3A. of 1896, made by Babu Chandi Charan Sen, Munsif of Alipur, dated 15th of February 1896.

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recovery of such taxes in the Small Cause Court of Sealdah, as well as in the Munsif's Court of Alipur, when a Munsif of Alipur is vested with the powers of a Judge of the Court of Small Causes. As it appears to me that a suit by the proprietor of *bustee* land for the recovery of Municipal taxes from the tenant of the *bustee* is not maintainable in the Court of Small Causes, I think that the plaints in these two cases should be returned. But as plaintiff's vakil contended that it has been the uniform practice in the district that these classes of suits are tried by the Court of Small Causes, I deem it my duty to refer the following question for the authoritative decision of the Hon'ble High Court: "Whether a suit by the proprietor of a *bustee* land for the recovery of Municipal taxes from the owner of a hut in the *bustee* is cognizable by the Mofussil Small Cause Court."

Dr. *Asutosh Mookerjee* for the plaintiff.—The question is, what is the meaning of the term "rent" in Article 8, section 2 of the Small Cause Courts Act? I contend that it has its ordinary meaning, *viz.*, whatever is lawfully payable by a tenant to his landlord on account of the use and occupation of the land held by him. It does not include anything which is recoverable as if it were rent. The extended definition given in sections 3 and 5 of the Bengal Tenancy Act has no application to the present case which is one of non-agricultural land, and is clearly governed by section 105 of the Transfer of Property Act. If "rent" ordinarily included anything recoverable as rent, the extended definition in the Bengal Tenancy Act would be superfluous. The provisions of section 119, Act II of 1888 (B.C.), cannot operate in such a way as to extend the meaning of the word "rent" in Act IX of 1887. Under section 47 of Act IX of 1880 (B.C.) cesses are recoverable as rent only by virtue of the extended definition given in the Bengal Tenancy Act. See *Watson* v. *Sreekristo* (1), *Nobin Chand* v. *Bansenath* (2). Sections 107, 117, 119 and 149 of Act II of 1888 (B.C.) clearly show that this is really a suit for recovery of money paid to the defendant's use, and therefore cognizable by the Small Cause Court.

Babu *Nund Lal Sarkar* (with him Babu *Sarat Chunder Dutt*) for the defendant.—The effect of section 119 of Act II of 1888 (B. C.) is that the money recoverable by the owner of the land from the occupier of a hut acquires the character and all the inci-

(1) I. L. R., 21 Calc., 132. (2) I. L. R., 21 Calc., 227

dents of rent. Section 119 says that for the recovery of such sum the owner is to have the same remedies, powers, rights and authorities as in the case of rent. The effect of this is that the jurisdiction of the Small Cause Court is ousted under Article 8, Schedule 2 of Act IX of 1887. It has been held that a suit to recover a Municipal tax is not cognizable by the Small Cause Court. See *Logan* v. *Kunji* (1), so also suits for recovery of road cess and public works cess. See *David* v. *Girish Chunder* (2). If Article 8, Schedule 2 of Act IX of 1887 does not apply, then either Article 13 or Article 41 applies. See *Rambux Chittangeo* v. *Modhoosoodun Pal Chowdhry* (3), *Bhatoo Singh* v. *Ramoo Mahton* (4).

The judgment of the High Court (PETHERAM, C.J., and RAMPINI, J.) was as follows:—

PETHERAM, C.J.—The answer to this question will be that a suit by the proprietor of *bustee* land for the recovery of Municipal taxes from the owner of a hut in the *bustee* is cognizable by the Provincial Small Cause Court. The jurisdiction of the Small Cause Court is fixed by the Provincial Small Cause Courts Act (IX of 1887), and this gives Small Cause Courts jurisdiction in all suits, except such as are mentioned in the second schedule of that Act. The two articles of that schedule, which are relied upon here, are Articles 8 and 13. Article 8 provides that suits for the recovery of rent are not cognizable by Courts of Small Causes, and Article 13 provides that suits for the recovery of cesses and other dues which are payable to a person by reason of his interest in immoveable property on account of *malikana*, *hakk* and fees of that kind, are not cognizable by Courts of Small Causes.

As to Article 13 we think it enough to say that no possible argument can be founded upon it. What is sued for here is not cess or dues of any kind, nor does it bear any resemblance to any of the matters mentioned in that article. As to Article 8 the reason why this suit is not within that article is because this is not a suit for rent, and Article 8 is expressly limited to suits for rent, and this is nothing of the kind. The argument is founded on section 119 of the Calcutta Municipal Act II (B.C.) of 1888, but

(1) I. L. R., 9 Mad., 110.
(2) I. L. R., 9 Calc., 183.
(3) 7 W. R., 377.
(4) I. L. R., 23 Calc., 189.

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that does not make the liability rent. The liability is created by the earlier sections which say that, if the owner of *bustee* land makes a payment, he may recover it from the owner of the hut, and that in itself would give him the remedy of an action upon the statutory law. What section 119 provides is that he shall have, for the recovery of such sum, all such and the same remedies, powers, rights and authority as if such sum were rent payable to him. That gives a man certain powers, rights, &c., but can by no possibility turn a claim which is not rent into rent, and what is mentioned in the schedule is rent, and rent only. For these reasons we think that the answer we have given is the answer which ought to be given to this reference.

S. C. G.

PRIVY COUNCIL.

P. C.* 1896 *Feb.* 19, 20, & *March* 5.

BHAIYA ARDAWAN SINGH (DEFENDANT) *v.* UDEY PRATAB SINGH (PLAINTIFF.)

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Arbitration—Award—Construction of award of arbitrators—Presumption as to authenticity of old documents—Evidence of possession—Maintenance—Grant of villages for—Nature of grant, whether absolute or resumable.

A grant of villages was made by a *talukdar* to his younger son *for maintenance*. The elder son inherited the family *taluk*.

In the next generation, in 1869, an award was made by a body of Oudh *talukdars*, as arbitrators on the submission of the disputants, who directed that the village "given as maintenance be decreed in favour of the grantee to continue as heretofore."

The questions raised in that award were, whether the villages had been granted only for life, or were inheritable by the descendants of the grantee, and whether the *talukdar*, or the holder of the grant for the time being, was liable for the revenue on the villages.

The same questions were now raised by the third generation, who were the great-grandsons of the grantor, on the construction of the award.

There was no limitation in the original grant of the villages to the grantee personally, nor was the grant expressly declared to be to him and his lineal descendants through males. But possession had followed in that order, and the *talukdar* had always paid the revenue.

* *Present*: LORDS WATSON, HOBHOUSE and DAVEY, and SIR R. COUCH.