

which I have referred in the several cases cited, the defendant is entitled to the benefit of the provisions of the first paragraph of section 135 of the Transfer of Property Act.

On the 10th of April the defendant obtained an order (without prejudice to the plaintiff's right to question the validity of the payment, giving him leave to pay into Court Rs. 3,500 in this suit. That amount has been deposited as appears from the certificate of the Accountant-General. I therefore direct an enquiry before the Registrar as to the expenses of and incidental to the assignment.

Final judgment reserved until after report.

Attorney for the plaintiff : Babu *N. C. Bose*.

Attorney for the defendant Pulin Behary Mullick : Mr. *G. C. Farr*.

F. K. D.

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FULL BENCH.

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

UPADHYA THAKUR AND OTHERS (PETITIONERS) v. PERSIDH SINGH AND OTHERS (OPPOSITE PARTIES.) *

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April 27.

Bengal Tenancy Act (VIII of 1885), section 104, clause 2 and section 108, clause 2—Proceedings under— Memorandum of appeal to Special Judge—Court Fees Act (VII of 1870), Schedule II, Art. 17, vi, Art. 1, clause b, part 2, sections 12, 17—Civil Procedure Code (1882), section 622—High Court's power of interference with order of Special Judge—Rules under Bengal Tenancy Act, Chap. VI, No. 25—Power of Local Government to make the rule.

A number of tenants were joined as defendants in a proceeding for settlement of rents under section 104, clause 2 of the Bengal Tenancy Act, and an appeal preferred by the landlords under section 108, clause 2, from the Revenue Officer's decision, making all or nearly all the tenants respondents. The appeal was dismissed by the Special Judge, on the ground that as many Court

* Full Bench Reference in Rule No. 1565 of 1895, against an order of Mr. Mackie, Special Judge and District Judge of Tirhut, dated the 10th April 1895, dismissing an appeal from the decision of the Settlement Officer of Mozufferpur, dated 11th June 1894.

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fees of Rs. 10 each, as there were tenants defendants, had not been paid, and the appellants petitioned the High Court to set aside the order under section 622 of the Civil Procedure Code.

Held by a Full Bench :—

(1) That the Special Judge refused to exercise a jurisdiction vested in him by law ; that the Court of the Special Judge is a Court subordinate to the High Court ; and the High Court had power to interfere under section 622 of the Civil Procedure Code.

Shewbarat Koer v. Nirpat Roy (1), dissented from.

(2) That the Local Government acted within the powers conferred by section 189, clause 1 of the Bengal Tenancy Act, in making Rule 25 of Chapter VI of the Government rules under the Act.

(3) That the decision of the Special Judge did not dispose of any question relating to *valuation*, far less of any question relating to the valuation of a *suit*; and the decision is not final under section 12 of the Court Fees Act.

(4) That the proceedings in this case cannot properly be regarded as a *suit*, and neither Article 17, clause vi of Schedule II, nor section 17 of the Court Fees Act was applicable ; the memorandum of appeal is nothing more or less than an application subject to one Court fee of eight annas only under Article 1, clause (b), part 2 of Schedule II of the Court Fees Act.

The case of *Petu Ghorai v. Ram Khelawan Lal Bhukut* (2) was wrongly decided.

THE petitioners as landlords made an application for settlement of rent of seventeen different tenants, joining them as defendants under Rule 31* of Chapter VI of the rules made by the Local Government under section 189 of the Bengal Tenancy Act. The Settlement Officer decided the case on the 11th June 1894 in favor of the tenants, and the petitioners preferred an appeal to the Special Judge of Tirhut. The memorandum of appeal bore Court fee stamps of Rs. 20, being the total of *ad-valorem* fees calculated on the annual rental of each holding, and a fee of eight annas for each holding in compliance with a notification of the Government of India No. 5086 S. R., published at page 157, Part I A. of the *Calcutta Gazette* of 17th October 1894. The Special Judge being of opinion that a fee of Rs. 10 should have been paid in respect of each of the tenants defendants dismissed the appeal, on the ground of insufficiency of Court fee on the memorandum of appeal.

* Rule 31. *Calcutta Gazette*, 23rd December 1885. Now Rule 25
Calcutta Gazette, 7th Nov. 1894.

(1) I. L. R., 16 Calc., 596.

(2) I. L. R., 18 Calc., 667.

The petitioners moved the High Court (PRINSEP and GHOSE, JJ.), and obtained the present rule *nisi* on the opposite party to show cause why the order of the Special Judge should not be set aside.

A similar case coming up before the same Bench a rule was granted (No. 911 of 1895), but upon the hearing of the rule Mr. Justice Prinsep and Mr. Justice Ghose passed the following order :—

“ We see no sufficient reason to interfere in this matter. The rule is discharged.”

The present rule (No. 1565 of 1895) came on for hearing before Mr. Justice Trevelyan and Mr. Justice Beverley, who, taking a view contrary to that taken in Rule 911 of 1895, referred this case to a Full Bench with the following opinion :—

“ In this case the petitioners by one application applied to the Settlement Officer of Mozufferpur for a settlement of the rent of excess lands held by several tenants, under the power given to him by Rule 31^a of the rules made by the Bengal Government. The Settlement Officer acted upon the application and determined in one proceeding the rent payable by each of these several tenants. That rule is as follows :—

“ With the consent of the Revenue Officer, any number of tenants occupying land under the same landlord in the same village or estate, may make a joint application for the settlements of rents, or may be joined as defendants in the same proceeding on a similar application by the landlord : Provided that, if at any time it shall appear to the Revenue Officer that the question between any two of the parties, of whom one is so joined with others, cannot conveniently be so jointly tried, he may order a separate trial to be held of that question, or he may pass such other order in accordance with the Civil Procedure Code, for the joint or separate disposal of the application as he may think fit.

“ The petitioners preferred an appeal against the decision of the Settlement Officer to the Special Judge of Tirhut making all or nearly all the tenants respondents, and a stamp of Rs. 10 was affixed to the memorandum of appeal.

“ The learned Special Judge has dismissed the appeal, on the ground that a stamp fee of Rs. 10 should have been paid in respect of each tenant.

“ As the whole matter in the Court below could legally have been and was tried against all the tenants in one suit, we think it could be continued as one appeal, and that the Judge in the appellate Court had no power to insist upon its being split up or tried as a collection of several appeals against the tenants.

^a Rule 31. Calcutta Gazette, 23rd December 1885. Now Rule 25

Calcutta Gazette, 7th Nov. 1894.

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"As a contrary view has been recently taken by another Bench of this Court in Rule 911 of 1895, we refer the matter for a final decision of a Full Bench."

Babu *Lakshmi Narayan Singh* for the petitioners contended that only one set of Court fees was leviable, as there was one memorandum of appeal, and as all the cases were allowed to be joined and treated as one case for saving public time and costs of the litigants. Rule 25* clearly indicates that object. But assuming this contention to be wrong, there was no difficulty in assessing an *ad-valorem* duty under the Court Fees Act, Schedule II, Art. 17, clause *vi*. The case of *Petu Ghorai v. Ram Khelawan Lal Bhukut* (1) does not lay down a sound principle of law and ought not to be followed.

Babu *Dasarathi Sanyal* for the opposite party.—The High Court had no power to issue a rule in this case under section 622 of the Civil Procedure Code. The Court of the Special Judge is not subordinate to this Court. *Sheubarat Koer v. Nirpat Roy* (2) and *Lala Kirut Narain v. Palukdhari Pandey* (3). Rule No. 25* passed by the Local Government is *ultra vires*. That rule is not authorized by section 189 of the Tenancy Act and is opposed to section 31 of the Civil Procedure Code. Then, again, the decision of the Judge being one on a valuation for Court fee purposes is final under section 12 of the Court Fees Act. The Special Judge is right in applying Art. 17, clause *vi* of Schedule II of the Court Fees Act. *Petu Ghorai v. Ram Khelawan Lal Bhukut* (1). There cannot be a joinder of separate causes of action, and the learned Special Judge's view was correct.

Babu *Lakshmi Narayan Singh* in reply.—The rulings cited from the 16th and 17th volumes of the Calcutta series are distinguishable. The High Court has power of superintendence under section 15 of the Charter, and can interfere in this case. The Rule No. 25* is not *ultra vires*, as it relates to procedure, and is authorized by section 189 of the Tenancy Act. Section 12 of the Court Fees Act has no application to this case; the Court did not value the case at all.

* Rule 31. Calcutta Gazette, 23rd December 1885. Now Rule 25 Calcutta Gazette, 7th Nov. 1894.

(1) I. L. R., 18 Calc., 667.

(2) I. L. R., 16 Calc., 596.

(3) I. L. R., 17 Calc., 326.

The judgment of the Full Bench (PETHERAM, C.J., and MACPHERSON, TREVELYAN, GHOSE and RAMPINI, J.J.,) was as follows :—

The question which forms the subject of this reference is whether when a number of tenants occupying land under the same landlord have been joined as defendants in the same proceeding for the settlement of rents under section 104, clause 2 of the Bengal Tenancy Act, and an appeal has been preferred to the Special Judge under section 108, clause 2, from the Revenue Officer's decision, making all, or nearly all, the tenants respondents, one Court fee of Rs. 10 is payable, or whether as many Court fees of Rs. 10 each as there are tenant-defendants should be paid. The Special Judge in the Court below held the latter view, and dismissed the appeal, as the proper amount of Court fee payable according to him was not paid.

On behalf of the petitioners it has been urged that as by Rule 25,* Chapter VI of the Government Rules under the Tenancy Act, the landlords were entitled to make a joint application, and as they presented in the Court below but one memorandum of appeal, only one fee was payable. On the other hand, it has been contended that the Special Judge's view is right, and the following preliminary objections to the hearing of the rule have also been put forward : (1) that this is a case in which this Court has no power to interfere under section 622 of the Civil Procedure Code ; (2) that the Court of the Special Judge is not a Court subordinate to this Court ; (3) that Rule 25* by which the landlords were authorized to join all the respondents as defendants in one application is *ultra vires*, and does not properly come within the scope of the powers conferred on the Local Government by section 189 of the Tenancy Act ; and (4) that under the provisions of section 12 of the Court Fees Act, the decision of the District Judge is final.

We will deal firstly with these preliminary objections. As regards the first of them, it is sufficient to say that the Judge in this case appears to have refused to exercise a jurisdiction vested in him by law, *viz.*, section 108, clause 2 of the Tenancy Act ; and so this Court has power to interfere under section 622 of the Civil Procedure Code, unless the Court of the Special Judge is not a Court subordinate to this Court.

* Rule 31. Calcutta Gazette, 23rd December 1885. Now Rule 25
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The learned pleader for the respondents bases his argument that the Court of the Special Judge is not subordinate to this Court on the terms of section 108, clause 3, of the Bengal Tenancy Act, which provides for appeals to the High Court from the decisions of a Special Judge in certain cases only, "as if he were a Court subordinate to the High Court within the meaning of the first section of Chapter 42 of the Code of Civil Procedure," which implies, it is said, that ordinarily he is not subordinate to this Court. But section 15 of the Court's Charter gives this Court powers of superintendence over all Courts which may be subject to its appellate jurisdiction, and the Court of the Special Judge is a Court subject to the appellate jurisdiction of this Court, though, no doubt, when the only question involved is as to a rent settled under Chapter X of the Act no second appeal lies to this Court. We, therefore, consider that the Court of the Special Judge is subordinate to this Court. The case of *Shew-darat Koer v. Nirpat Roy* (1) may at first sight appear to be in conflict with this view, but we would only say that, if it be so, we are unable to agree with the decision in that case on this point.

The third objection urged by the learned pleader for the respondents is that Rule 25,* Chapter VI of the Government Rules under the Tenancy Act, under which the plaintiffs-appellants made a joint application to the Revenue Officer for the settlement of the respondents' rents, is *ultra vires*, and beyond the powers given to the Local Government by section 189 of the Tenancy Act. But clause (1) of section 189 gives the Local Government power to make rules "consistent with this Act" (*i.e.*, the Tenancy Act) "to regulate the procedure to be followed by Revenue Officers in the discharge of any duty imposed upon them by or under this Act." Now, the rule in question, No. 25* of Chapter VI of the Government Rules, allows any number of tenants occupying land under the same landlord to be joined as defendants in the same proceeding for the settlement of rents, and this is what has been done in this case. *The Revenue Officer in settling the rents was obviously discharging a duty imposed on him by section 104 (2) of*

* Rule 31. Calcutta Gazette, 23rd December 1885. Now Rule 25
Calcutta Gazette, 7th Nov. 1894.

(1) I. L. R., 16 Calc., 596.

the Act. But it is said this rule practically authorises the joinder of several causes of action in one proceeding, which is contrary to section 31 of the Civil Procedure Code. This may be so, but this would seem to be yet within the powers conferred on the Local Government by section 189, clause 1; for Rule 25* is undoubtedly a rule regulating the procedure of the Revenue Officer in the discharge of a duty imposed on him by the Tenancy Act, and it is in no way inconsistent with anything in the Tenancy Act, which is all that section 189 requires the rules to be.

The objection that under the provisions of section 12 of the Court Fees Act the decision of the District Judge in this case is final is also not well founded. According to the terms of this section, it is only the decision of a Court on a question relating to the valuation of a suit, that is final, but the decision of the Special Judge in this case does not dispose of any question relating to valuation,—far less, for reasons which will presently be given, of any question relating to the valuation of a suit.

As to the merits, we think that the proceedings in this case cannot properly be regarded as a suit. The proceedings are, under section 104 (2) and the Government Rules, initiated, not by a plaint, but by an application, and this application is not subject to an *ad-valorem* Court fee duty, as suits for money are subject under the provisions of section 7 (1) of the Court Fees Act, but according to a notification of the Government of India, No. 5086 S. R., published at page 157, Part I A of the *Calcutta Gazette* of the 17th October 1894, to a Court fee of 8 annas. If then, the case is not a suit at its initiation, and need not be commenced by a plaint, why should it be a suit, and why should a memorandum of appeal be required to be presented in it at a later stage? The provisions of section 107 do not prescribe that the decision of the Revenue Officer in every proceeding under Chapter X shall be a decree, but that it shall have “the force of a decree,” which it may have without the proceeding necessarily becoming a suit. None of the rules framed by Government under the Tenancy Act lay down that such a proceeding shall be a suit.

* Rule 31. *Calcutta Gazette*, 23rd December 1885. Now Rule 25
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Rule 30 (b) merely prescribes that the proceeding shall be dealt with as a suit, that is to say, in respect of its *procedure*, which is all that the provisions of section 189, clause (1), allow Government to regulate by means of a rule. Rule 30 (b) cannot, therefore, have been intended to lay down that a proceeding under Chapter X of the Bengal Tenancy Act shall be dealt with as a suit in respect of the Court fees payable on it. If it did, this would be regulating more than the mere procedure to be followed by Revenue Officers in the discharge of a duty imposed upon them by the Act, and would be *ultra vires*. It would, therefore, appear that the case of *Petu Ghorai v. Ram Khelawan Lal Bhukut* (1), in which it has been held that a proceeding under Chapter X is a suit, has been wrongly decided, and it follows, as article 17, clause *vi*, of Schedule II of the Court Fees Act applies only to plaints or memoranda of appeal in suits, that that Article is altogether inapplicable. For the same reason section 17 of the Act is also inapplicable; so that neither one fee of Rs. 10, nor as many fees of Rs. 10 as there are tenant-defendants in the proceeding, should be paid on the applicants' memorandum of appeal to the Special Judge. We can find no Article of the Court Fees Act expressly applicable to the applicants' memorandum of appeal to the Special Judge. But, if the proceeding be not a suit, then the memorandum of appeal is nothing more or less than an application, and, consequently, subject to one fee of eight annas only under Article (1), clause (b), (2), Schedule II, of the Court Fees Act, and we find that this was the Court fee properly payable by the petitioners on their memorandum of appeal to the Special Judge.

This rule will, therefore, be made absolute, and as more than the necessary Court fee duty has been paid by the applicants, the Special Judge will now be directed to proceed with the hearing of their appeal.

S. C. C.

Rule made absolute.

(1) I. L. R., 18 Calc., 667.