1922

RAM DAS v. DUBRI KOERI.

of the Revenue Court above-mentioned and for the possession of the land in dispute.

The defendant's contention was that he was the chief tenant and that such a suit did not lie and was barred by the rule of *res judicata*.

The Munsif decreed the suit, holding that the Revenue Courts were not competent to decide the question that the defendant was the chief tenant and not a sub-tenant of the plaintiff, and the present suit, being between rival tenants, was one cognizable by the Civil Court. This decision was affirmed on appeal.

The defendant appealed to this Court and a learned Judge of this Court has allowed his appeal and dismissed the plaintiff's claim. No doubt it was the tendency of the Court in earlier cases to allow such suits to be brought in the Civil Court, but this view has now been departed from.

Mr. Justice PIGGOTT has very clearly discussed and put the present point of view in *Baljit* v. *Mahipat* (1). We are in full agreement with his view. The plea of sub-tenancy has been heard and finally determined by the only court capable of entertaining it, and the present suit of the plaintiff to have the decision of the Revenue Court set aside must fail.

For these reasons we agree with the decision of the learned Judge of this Court and dismiss the appeal with costs.

Appeal dismissed.

Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Gokul Prasad.

BHOJ RAJ (PLAINTIFF) *v.* HARDEVA AND OTHERS (DEFENDANTS).*

1922 *June*, 6.

Act No. V of 1882 (Indian Easements Act), section 59—Licence—Power to cancel licence—Licence for erection of thatched sheds not appurtenant to holding of licensee.

Certain tenants, with the permission of their zamindar, erected some thatched sheds on waste land belonging to the zamindar. Neither the land nor the sheds were appurtenant to the tenants' agricultural holding. After these sheds had been in existence for some twenty years, the zamindari was sold to the plaintiff. *Held* that the plaintiff was not debarred from cancelling the licence in pursuance of which the sheds had been erected.

THIS was an appeal under section 10 of the Letters Patent from the judgment of a single Judge of the Court. The judgment under appeal was as follows:—

"The learned District Judge has found that the defendants have occupied the land in suit for more than 20 consecutive years for the purpose of tethering their cattle and have constructed cattle troughs and huts upon

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* Appeal No. 61 of 1921, under section 10 of the Letters Patent.

(1) (1918) I. L. R., 41 All., 203.

it. He considers that they are licensees and applies the provisions of section 60, Act V of 1882, holding that they can be ejected at the will of the zamindar, who can revoke their licence at his pleasure. The land in question is land outside the inhabited area. The principles governing the case are, I consider, the same whether the land be in the inhabited area or outside it. These principles I have enunciated at some length in Second Appeal No. 1619 of 1918, *Syed Aijaz Husain* v. *Ali*, which I decided on the 15th of February, 1921, and *Sri Thakur Radha Krishnaji Maharaj* v. *Bisheshwar Nath Rai*, Second Appeal No. 431 of 1919, which I decided on the 17th of March, 1921. The view that I have taken in those cases is, shortly, this :—That when a zamindar has granted to a tenant in an agricultural village in this province permission to use a piece of waste land to satisfy his reasonable requirements in the way of tethering cattle or doing similar acts connected with his employment, he cannot revoke the licence at his will after the tenant has enjoyed the privilege for more than 12 years. I know that this view is not accepted by all the judges in this Court. I believe that it is not accepted by the majority. This is not a question that can be decided upon rulings because there are many conflicting rulings.

I do not propose to refer the point to a Full Bench, as I believe my decision in second appeal No. 1619 of 1918 has already gone up under Letters Patent Appeal. I do not propose to change the view which I have taken in previous cases. I therefore allow this appeal and direct that the plaintiff's suit stand dismissed and that the plaintiff pay his own costs and those of the defendants appellants in all courts."

Munshi *Panna Lal*, for the appellant.

Munshi *Gulzari Lal*, for the respondents.

MEARS, C. J. and GOKUL PRASAD, J. :—This appeal arises out of a suit brought by the plaintiff (appellant) to recover a certain plot of waste land in the village from the defendants who, according to the plaintiff's allegation, have erected certain thatched sheds and cattle troughs without his permission a short time ago.

The defence raised was (1) that the sheds were 25 years old, (2) that the plaintiff had lost title because of want of possession for 12 years, and (3) that these constructions were necessary for the defendants' cultivation in the village, or, in other words, that they were appurtenant to their holding.

The first court dismissed the suit on the ground that it was barred by time because the plaintiff had not proved his possession within 12 years of suit.

The lower appellate court found, in concurrence with the first court, that the constructions were more than 20 years old and that the defendants were mere licensees; that the plaintiff having got the property from the original licensors by virtue of transfer, the licence ceased to exist, having regard to section 59 of the Indian Easements Act (V of 1882), and the defendants were liable to ejectment. It accordingly decreed the plaintiff's suit.

1922

BHOJ RAJ
v.
HARDEVA.

The defendants came up in appeal and a learned Judge of this Court has dismissed the plaintiff's claim on the ground that a zamindar cannot revoke a licence like this at his will after the tenant has enjoyed the privilege for more than twelve years. As a general proposition of the law, we cannot accept this statement of the law as correct. A licensee cannot by enjoying the licence for any length of time acquire rights adverse to that of the licensor. The question whether a certain class of land is appurtenant to the holding of a tenant is one of fact depending upon the circumstances of each particular case. In this case, as we have stated above, the lower appellate court has found that the defendants did not hold the plot in suit or the constructions thereon as appurtenances to their holding. On this finding and the further fact that the plaintiff was a transferee from the original licensor, the licence had ceased to exist by operation of law and the plaintiff was entitled to a decree. We, therefore, allow this appeal. As a claim based upon false allegations by a zamindar is one which does not meet with our approval, we refuse him his costs in all courts. The result is that the judgment of the learned Judge of this Court is set aside and the plaintiff's claim is decreed, but without costs.

Appeal decreed.

MATRIMONIAL JURISDICTION.

Before Sir Grimwood Mears, Knight, Chief Justice, Mr. Justice Walsh and Mr. Justice Gokul Prasad.

1922
June, 6

WILLIAM FITZROY HOWARD (PETITIONER) *v.* DORIS MAY HOWARD (RESPONDENT) AND THOMAS DENNET (CO-RESPONDENT).*

Suit for dissolution of marriage—Procedure—Necessity of examining petitioner on oath.

In all divorce cases the petitioner must come into the witness-box, he must be sworn, and he must prove his case, because, amongst other things, the Judge has to satisfy himself whether there is any collusion between the parties, and he has further to satisfy himself as to the complete honesty and truth of the petition.

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

Mr. *E. A. Howard*, for the petitioner.

The respondent and co-respondent were not represented

MEARS, C. J., WALSH and GOKUL PRASAD, JJ. :—On the 24th of August, 1921, Mr. Sherring, sitting as District Judge

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* Matrimonial Reference No. 11 of 1921.