

## APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Banerjee.

PADMANAND SINGH (PLAINTIFF) v. BAJO AND ANOTHER  
(DEFENDANTS).\*

1892  
May 6.

*Bengal Tenancy Act (VIII of 1885), ss. 101-115—Power of Settlement  
Officer to resume and assess lakhiraj land.*

In proceedings under Chapter X of the Bengal Tenancy Act (VIII of 1885) the Settlement Officer has no power to resume and assess with rent land which has been held as *lakhiraj*.

In this case, in the course of proceedings under Chapter X of the Bengal Tenancy Act (VIII of 1885), the plaintiffs alleged that 7 bighas of land in village Chainpur, pergunnah Uttarkhand, zillah Bhargulpore, their *mal* lands, had been wrongly recorded as the *bromutter* land of the defendants, whereas the proper amount should be 4 bighas. They prayed that the record should be corrected, and that the 3 bighas of excess land should be assessed with rent at the rate prevailing in the district, *vis.*, Re. 1-5-6 per bigha.

The defendants stated that no *mal* land of the plaintiff had been recorded as the defendants' *bromutter* land; and that the whole of the 7 bighas of land referred to was their *bromutter* land of which they had been in possession for a long time.

It was admitted at the hearing that the defendants had never paid rent in respect of the lands in dispute.

The Settlement Officer held that of the land 4 bighas were the *bromutter* land of the defendants, and were *lakhiraj* lands; the remaining 3 bighas he held to be *mal* lands, and assessed them with rent.

On appeal the Subordinate Judge held that the whole of the 7 bighas were *lakhiraj* lands of the defendants, and dismissed the plaintiffs' claim.

\* Appeal from Appellate Decree No. 771 of 1891, against the decree of Baboo Pores Nath Banerjee, Subordinate Judge of Bhargulpore, dated the 14th of January 1891, reversing the decree of Baboo Joga Dass Bhattacharjee, Assistant Settlement Officer of Raj Beneli and Srinagar estates, dated the 8th of January 1890.

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PADMANAND  
SINGH  
v.  
BAJO.

The plaintiffs appealed to the High Court.

Mr. *R. E. Twidale* for the appellant.

Baboo *Kali Kissen Sen* for the respondents.

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

It was found by the Settlement Officer in this case, which has been dealt with under Chapter X of the Bengal Tenancy Act, that 4 out of the 7 bighas of *lakhiraj* land was held by the defendant under that title, and although it was admitted on behalf of the zemindar that at no time has he been in receipt of rent of any of those lands, either of the larger tenure of 7 bighas, or of the smaller exempted as rent-free, or of the 3 bighas, the difference between the two, the Settlement Officer has recorded the 3 bighas as rent-paying land and made it liable to the payment of certain rent settled by him. There is certainly no authority for the assumption of such power on the part of the Settlement Officer. The only provision of the law under which he could make a settlement of rent in respect of excess land, is section 104, and that does not apply to lands held by one who is not a tenant in respect of other lands to which they have become attached. It seems to us rather that the Settlement Officer was assuming to himself the functions of the Civil Court to resume lands hitherto held rent-free, but in his opinion as a trespasser.

The District Judge, however, very properly modified the decree of the first Court. He held that inasmuch as the plaintiff had never realized rent from the defendant in respect of the lands in dispute, and admittedly some lands were *lakhiraj*, there was no reason to suppose that the remaining land was not also *lakhiraj*. However that may be, in the view that we take, it was not competent to the Settlement Officer to assess those lands with rent. The appeal must, therefore, be dismissed with costs.