

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

MUSAMMAT KUBERA KUAR AND OTHERS (DEFENDANTS-APPELLANTS) v. THAKURAIN CHHABRAJ KUAR (PLAINTIFF-RESPONDENT)*

1935
May 8

United Provinces Land Revenue Act (III of 1901), sections 79 and 233(e)—Settlement Officer determining rent payable by under-proprietor—Order, whether can be questioned by Civil or Revenue Court.

Section 233(e) of the Land Revenue Act debars the Civil Court from entertaining any suit or other proceeding with respect to the amount to be paid to a proprietor by an inferior proprietor when that amount has been fixed by the Settlement Officer. This provision of the Land Revenue Act clearly shows that the order of the Settlement Officer under section 79 of the Act determining the rent payable by the under-proprietors is conclusive between the parties. It is not open to the civil court or for the matter of that to a rent Court to question the correctness of the Settlement Officer's order. *Jai Patier Singh v. Ram Ratan Lal* (1), referred to.

Mr. *Khaliquzzaman* for Mr. *M. Wasim*, for the appellants.

Mr. *Surendra Nath Srivastava*, for the respondent.

SRIVASTAVA, J.:—This is a second rent appeal by the defendants against the decree, dated the 25th of April, 1933, of the learned District Judge of Rae Bareilly reversing the decree dated the 26th of July, 1932, of an Assistant Collector of the first class in the Partabgarh District.

The admitted facts of the case are that the plaintiff-respondent sued the defendants for resumption and in that suit a compromise was arrived at on the 1st of September, 1897, under which the defendants as under-proprietors were declared liable to pay only the Government revenue. Subsequently at the last settlement the Settlement Officer fixed the rent payable by the defend-

*Second Rent Appeal No. 57 of 1933, against the decree of R. B. Pandit Raghubar Dayal Shukla, District Judge of Rae Bareilly, dated the 25th of April, 1933, reversing the decree of Mirza Sharifuddin, Assistant Collector, 1st class of Partabgarh, dated the 26th of July, 1932.

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ant under section 79 of the United Provinces Land Revenue Act, 1901, which included a sum of Rs.47-1-0 for *malikana*.

The plaintiff instituted the suit which has given rise to the present appeal claiming arrears of rent under section 108, clause (2) of the Oudh Rent Act on the basis of the rent fixed by the Settlement Officer under section 79 of the United Provinces Land Revenue Act. The Assistant Collector disallowed the item relating to *malikana*, but the learned District Judge has given a decree for the entire amount claimed on the basis of the rent fixed by the Settlement Officer. The only question raised in the appeal is whether the order of the Settlement Officer made under section 79 of the United Provinces Land Revenue Act, is binding on the parties or whether the defendants can be allowed to question it. Reliance has been placed on section 44 of the Land Revenue Act, and it has been argued that the rent fixed by the Settlement Officer was entered in the register prescribed by clause (b) of the section 32 of the Land Revenue Act and the entry must be deemed to have been made under sub-section (3) of section 33 of the Act. The argument proceeded that under section 44 of the Act the presumption relating to the correctness of the said entry was a rebuttable one and that it was therefore permissible for the defendants to show that the order of the Settlement Officer was incorrect. In my opinion the argument is fallacious. Section 33, sub-section (3) refers to changes made in and transactions affecting any of the rights or interests recorded in the registers prescribed by clauses (a) to (d) of section 32. In the present case we are not concerned with any such changes or transactions. The plaintiff bases her claim on the order made by the Settlement Officer determining the rent payable by the under-proprietor under section 79 of the Land Revenue Act. Section 233(e) debars the civil court from entertaining any suit or other proceeding with respect to the amount to be paid to

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a proprietor by an inferior proprietor when that amount has been fixed by the Settlement Officer. This provision of the Land Revenue Act in my opinion clearly shows that the order of the Settlement Officer under section 79 of the Act determining the rent payable by the under-proprietors is conclusive between the parties. It is not open to the civil court or for the matter of that to a rent Court to question the correctness of the Settlement Officer's order. A similar view appears to have been taken by a Bench of the late Court of the Judicial Commissioner of Oudh in *Jai Patter Singh v. Ram Ra'an Lal* (1) with reference to the corresponding provisions of the old Oudh Land Revenue Act (XVII of 1876). I am therefore of opinion that the decision of the learned District Judge is correct and must be upheld.

The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL

Before Mr. Justice Ziaul Hasan

BISHNATH AND OTHERS (ACCUSED-APPLICANTS) v. KING-EMPEROR (COMPLAINANT-OPPOSITE-PARTY)*

1935
May 28

Criminal Procedure Code (Act V of 1898), sections 225 and 537—Indian Penal Code (Act XLV of 1860), section 147—Charge—Failure to specify common object in the charge, whether only an irregularity covered by section 537—Omission to state particulars of offence—Failure of justice occasioned but accused not misled—Omission, if material—Criminal trial—Evidence not recorded in presence of accused—Trial, whether vitiated.

Failure to specify the common object in a charge under section 147 of the Indian Penal Code is only an irregularity covered by section 537 of the Code of Criminal Procedure. *Ghaziuddin Khan v. King-Emperor* (2), relied on.

*Criminal Revision No. 7 of 1935, against the order of Mr. K. N. Wanchoo, J.C.S., Sessions Judge of Rae Bareilly, dated the 20th of December, 1934.

(1) (1898) 1 O.C., 124.

(2) (1932) 9 O.W.N., 1109.