

Before Mr. Justice O'Kinealy and Mr. Justice Banerjee.

1892
May 19.

RAJANI KANT NAG AND OTHERS (DEFENDANTS) *v.* JAGESHWAR SINGH (PLAINTIFF).

Second Appeal—Bengal Tenancy Act (Act VIII of 1885), s. 153—Cesses, Suit for—Bengal Act IX of 1880, s. 47—Appeal in cases under Rs. 100—Meaning of 'rent.'

Although the Bengal Tenancy Act declares that in sections 53 to 68 and in sections 72 to 75, "rent" includes cesses, yet these are enabling provisions, passed to extend the meaning of "rent," and it in no way interferes with the law refusing a right of appeal in suits below Rs. 100 in value, which law is made applicable to suits for cesses by section 47 of Bengal Act IX of 1880.

THE suits out of which this appeal (and five other appeals) arose were brought to recover road and public works cesses from the defendants. The suits were each below Rs. 100 in value, and the only question material to this report was whether a second appeal lay to the High Court, to which the defendants appealed, both the lower Courts having decided in favour of the plaintiff.

Baboo Saroda Churn Mitter and Baboo Porosh Chunder Chowdhry for the appellants.

Baboo Bodaya Nath Dutt for the respondent.

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

These appeals were heard together, and our decision in any one of them will govern the others. They have been laid for the recovery of road cess and public works cess, and are each of small value. The question raised for our decision is whether an appeal lies to this Court.

It is not denied that if the ordinary procedure for realizing rents by suit is followed, as directed by the Acts under which cesses are levied, no appeal would lie; but it is said that because the definition of "rent" in the Rent Act also includes cesses for

* Appeal from Appellate Decree No. 194 of 1891, against the decree of J. Crawford, Esq., Judge of Hooghly, dated the 11th of December 1890, affirming the decree of Baboo Gopal Chunder Banerjee, Munsiff of Hooghly, dated the 21st of December 1889.

certain purposes, suits for cesses should not be treated as suits for rent, and that a second appeal lies.

No doubt the Act declares that in sections 53 to 68, both inclusive, and in sections 72 to 75, both inclusive, "rent" includes cesses, but we think that these are enabling provisions passed to extend the meaning of "rent," and it in no way interferes with the law refusing a right of appeal in suits below one hundred rupees in value, which law is made applicable to suits for cesses by section 47 of Bengal Act IX of 1880.

The appeal will be dismissed with costs.

Appeal dismissed.

A. F. M. A. R.

1892
 RAJANI
 KANTI NAG
 v.
 JAGESHWAR
 SINGH.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

ABDUL HOSSEIN (DECREE-HOLDER) v. FAZILUN (JUDGMENT-DEBTOR).*

1892
 August 10.

Limitation Act, 1877, sch. II, art. 179, cl. 4—Execution of decree—Step in aid of execution.

In execution of a decree certain property was attached and the sale proclamation issued and served. Prior to the sale the decree-holder applied to the Court executing the decree to release a portion of the property from attachment, and stating that he had, at the request of the judgment-debtor, decided not to proceed with the sale asked that the sale might be postponed and the case struck off the file, the attachment, so far as the remainder of the property was concerned, being maintained. The application was acceded to and the case struck off the file. On a subsequent application to execute the decree, *held*, that the above application was not an application to take some step in aid of execution of the decree within the meaning of clause 4, art. 179 of sch. II of the Limitation Act of 1877, as it had rather the effect of temporarily retarding the execution, and that the application to continue the attachment under the circumstances of the case, even supposing it to have been a substantive application apart from the other prayers coupled with it, had merely the effect of leaving things precisely where they were, and did not advance the execution in any respect whatsoever.

* Appeal from Order No. 268 of 1891, against the order of J. G. Charles, Esq., District Judge of Shahabad, dated the 2nd of May 1891, affirming the order of Babu Dwarka Nath Mitter, Subordinate Judge of that district, dated the 28th of January 1891.