

Before Mr. Justice Pigot and Mr. Justice Rampini.

SURENDRONATH PAL CHOWDHRY AND OTHERS (DEFENDANTS) v.
TINCOWRI DASI (PLAINTIFF).*

1892
July 14.

Sale for arrears of rent—Patni tenure, Sale of—Registration in zamindar's serishtā—Rights of zamindar—Bengal Regulation VIII of 1819, ss. 5, 7—Bengal Tenancy Act (VIII of 1885), s. 13.

A patni taluk was sold in execution of a decree, but the auction-purchaser, although he obtained possession, did not get himself registered in the zamindar's *serishtā*. In a suit by the zamindar against the former holder of the patni for rent due for a period previous to the sale, held, that the suit lay against him, and that the rights of the zamindar were not affected by the existence of the remedy provided by section 7 of Bengal Regulation VIII of 1819.

Lukhinarian Mitter v. Khetter Pal Singh Roy (1) referred to.

THIS was a suit brought by the plaintiff Tincowri Dasi to recover arrears of rent from Assar 1293 to Magh 1296 in respect of a patni taluk. The defendants admitted having held the taluk up to the end of Aughran 1294, corresponding with the 15th December 1887, but contended that, as the patni taluk was then sold in execution of a decree and purchased by one Suresh Chundra Banerji, they were not liable for rent which accrued after that date. The auction-purchaser had obtained possession of the taluk, but did not get himself registered in the zamindar's *serishtā*, as he disputed the amount of fee payable by him.

The Subordinate Judge decreed the suit.

The defendants appealed to the High Court.

Dr. *Troyluckya Nath Mitter* and Baboo *Akhoy Coomar Banerjee* for the appellants.

Baboo *Hurro Pershad Chatterjee* for the respondent.

The judgment of the High Court (PIGOT and RAMPINI, JJ.) was as follows :—

In this case the appellants were the holders of a patni, their interest in which has been sold in execution. The purchaser in

* Appeal from Original Decree No. 184 of 1891, against the decree of Baboo Brojo Behary Shome, Subordinate Judge of Nadia, dated the 31st of March 1891.

1892
 SURENDRO-
 NATH PAL
 CHOWDHRY
 v.
 TINCOWRI
 DASI.

execution has not agreed with the zamindar with respect to the amount of fee payable by him on the transfer of the patni to his name under the provisions of section 5, Regulation VIII of 1819. The purchaser appears to dispute the amount of the fee, and as the result of that controversy the purchaser of the execution-sale has not got himself registered, and although he is in possession, the rent for which this suit is brought against the old tenant is undoubtedly unpaid. A decree has been given by the lower Court against the old tenant for the amount of the rent due, and he appeals. No question has been raised in the argument before us as to the fact of the rent being due, or as to the amount of the rent which is due, but it is contended that inasmuch as the former owner of the patni who has lost it in the execution-sale is not in possession, and inasmuch as the purchaser is in possession, the suit ought not to have been allowed to proceed against him, but that the purchaser who is in possession ought to have been proceeded against under the terms of section 7 of Regulation VIII of 1819, and it is also contended that inasmuch as that section confers upon the zamindar the exceptional power of attachment through a sezawal against the purchaser in possession, that by implication ought to be treated as constituting the only remedy of the zamindar, when the assignee of the tenancy is in possession, and as taking away the power of suing the old tenant. In the case of *Luckhinarain Mitter v. Khetter Pal Singh Roy* (1) cited by the Subordinate Judge, section 7 of the Regulation is thus referred to:—"The zamindar or other superior holder in certain cases is empowered to attach the property, if the subordinate holder neglects to register his name and to hold it in trust for the subordinate holder, and in all cases until the transfer is registered the old tenant and the tenure itself are liable for the rent due." Now, it appears to us that we cannot challenge the law so laid down by this Court many years ago. Whether this is a *casus omissus* in the law, or whether the former tenant, compelled in this suit to pay the rent of a property of which he is not in possession, has any remedy against the unregistered purchaser in possession, provided it be established that that purchaser has refused unreasonably and improperly to get himself registered in

the zamindar's books, and thereby to relieve the former tenant from liability, is a matter which is not before us, and which we have no right to determine. What we have before us is simply this question: does or does not this suit lie against the old tenant, and we think we are bound to hold that it does, and that the rights of the zamindar, as stated in the judgment of this Court, to which we have referred, are not affected by the existence of the remedy provided by section 7, and that there is no defence to the suit.

We must therefore dismiss the appeal with costs.

Appeal dismissed.

A. F. M. A. R.

Before Mr. Justice Pigot and Mr. Justice Rampini.

PEARY MOHUN MUKERJI (PLAINTIFF) v. ALI SHEIKH AND OTHERS (DEPENDANTS).*

1892
July 18.

Res judicata—Civil Procedure Code (Act XIV of 1882), s. 13—Bengal Tenancy Act (Act VIII of 1885), s. 158—Incidents of tenancy, Application to determine—Dispute as to tenancy—Landlord and tenant.

The object of section 158 of the Bengal Tenancy Act is merely to provide a summary procedure for settling disputes between landlord and tenant in regard to the particulars referred to in clauses (a), (c) and (d) of the section. Though clause (b) does authorize the Court to determine the name and description of the tenant, this was not intended to and does not authorize the Court to decide conclusively disputes as to the right to possession of the land. An issue, therefore, regarding a dispute as to the existence of the relation of landlord and tenant between the parties in a proceeding under section 158 can only be decided collaterally, and does not arise between the parties in such a manner as to make the decision upon it *res judicata* between them in a subsequent regular suit.

Bhupendro Narayan Dutt v. Nemye Chund Mondul (1) and *Debendro Kumar Bundopadhya v. Bhupendro Narain Dutt* (2) referred to.

THE plaintiff Raja Peary Mohun Mukerji sued to eject Ali Sheikh, the defendant No. 1, from and recover possession of a certain plot of land.

* Appeal from Appellate Decree No. 1097 of 1891, against the decree of F. F. Handley, Esq., Judge of Nadia, dated the 10th of June 1891, affirming the decree of Babu Bepin Chunder Roy, Munsif of Ranaghat, dated the 11th of October 1890.

(1) I. L. R., 15 Calc., 627.

(2) I. L. R., 19 Calc., 182.