APPELLATE CIVIL.

Before Dawson Miller, C. J. and Foster, J.

MUSSAMMAT JAGESHWAR KUER

1923.

v.

May, 21.

TILAKDHARI SINGH.*

Chota Nagpur Tenancy Act, 1908 (*B. C. Act VI of* 1908), *sections* 139 *and* 41—*Non-occupancy* raiyats *holding over, suit to eject, jurisdiction of Munsif to try—Plaint presented to wrong court, procedure.*

A suit to eject *raiyats* who are holding over after the expiry of a lease is not, in places to which the Chota Nagpur Tenancy Act, 1908, applies, entertainable by a Munsif. Under section 139 of the Act such a suit is cognizable only by the Deputy Commissioner.

Where a suit was brought in the Court of a Munsif to eject the defendants from certain land on the ground that they were trespassers, and it was found that they were non-occupancy *raiyats* holding over after the expiry of a lease for 3 years, *held*, (*i*) that the defendants were liable to be ejected only on the grounds prescribed by the Act for the ejectment of non-occupancy *raiyats*, (*ii*) that the Munsif had no jurisdiction to entertain the suit and (*iii*) that as the suit was not framed as a suit for the ejectment of non-occupancy *raiyats* the plaint could not be returned to be presented to the Deputy Commissioner but should have been dismissed.

Appeal by the plaintiffs.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C.J.

Baikuntha Nath Mitter and *Ram Prasad*, for the appellants.

Lachmi Narayan Sinha and *Devaki Prasad Sinha*, for the respondents.

* Miscellaneous Appeal No. 243 of 1922, from an order of Babu Amrita Nath Mitra, Subordinate Judge of Ranchi, dated the 16th September, 1922, reversing an order of Babu Narendra Lal Bose, Munsif of Palamau, dated the 10th March, 1921.

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DAWSON MILLER, C. J.—The only question for determination in this appeal is whether the learned Subordinate Judge was right upon the facts found in the case in arriving at the conclusion that the Munsif had no jurisdiction to hear and determine the suit.

The suit was instituted by the plaintiffs as proprietors against the defendants as tenants or rather as the persons who had been in possession of the land as tenants under a three years' lease and whose lease had expired, to eject them from the land. Other defendants who it was alleged had been put in by the first defendant as their tenants were also made parties but they disclaimed all interest in the property and they need not therefore be any longer considered. The case put forward by the plaintiffs was that the defendants' lease having expired they were trespassers and therefore could be ejected.

Various defences were raised and amongst others the defendants contended that they had been in occupation of this land many years before the lease and were in fact occupancy *raiyats*. The plaintiffs on the other hand contended that their right under the lease was merely that of tenure-holders and that they had no *raiyati* right at all.

The learned Munsif decided in favour of the plaintiffs. He came to the conclusion that the evidence of the defendants as to occupation of the land before the lease in question could not be accepted; that they had in fact been cultivating some of this land before that period under what is known as an *utakar* lease which gave them no rights of occupancy and that the land granted under the lease of three years, which had expired, could not be identified with the land of which the defendants had previously been in possession.

When the case came before the learned Subordinate Judge on appeal, although he agreed with the facts as found by the Munsif as to what had previously taken place, on considering the terms of the lease under which the defendants had been admittedly in possession

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for three years and somewhat longer period to the institution of the suit, was of opinion that the defendants' rights, under the lease, were the rights of a *raiyat*, that is to say the right of taking the land into their own cultivation and not the rights of a tenure-holder or *thikadar* granted for the purpose of putting others in possession of the land in order to cultivate it. He refers to the terms of the lease and if his reference is accurate as one must presume it is, because the lease has not been produced in this Court so as to challenge it, then there can be no doubt that the learned Judge was right in coming to the conclusion that the interest of the defendants was that of *raiyats*, and although they had acquired no occupancy title they were in fact non-occupancy *raiyats*. On reference to the provisions of the Chota Nagpur Tenancy Act it appeared to the learned Subordinate Judge that a suit to eject a tenant of agricultural land or to cancel any lease of agricultural land was not cognizable by the Civil Court because under section 139 of the Chota Nagpur Tenancy Act it is provided, *inter alia*, that suits of the nature which I have just mentioned:

> "Shall be cognizable by the Deputy Commissioner and shall be instituted and tried or heard under the provisions of this Act and shall not be cognizable in any other Court except as otherwise provided in this Act."

The Act further provides machinery for trying cases of that sort before the Deputy Commissioner with certain powers of appeal to his superior officer. Moreover the grounds upon which a non-occupancy *raiyat* shall be liable to ejectment are set out in section 41 and other places in the Act. A special procedure is provided for trying cases of that sort and it is only by the tribunals, prescribed in the Act, that such a suit can be tried. Having arrived at that conclusion, as the learned Subordinate Judge did, it seems to me that he was bound to dismiss the suit. The suit as framed, was one to eject trespassers, but on the facts found the defendants were not trespassers but non-occupancy *raiyats*. As no suit to eject non-occupancy

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raiyats could be tried in the Civil Court the question of the plaintiffs' rights against them could not be determined in the present suit. The learned Judge should have contented himself with dismissing the suit but he ordered the plaint to be returned for presentation in the proper Court. This could not be done as the suit was not framed as one for the ejectment of *raiyats*. It was nevertheless rightly dismissed and in that respect his decree should be affirmed. Subject to this modification of the Subordinate Judge's order the appeal is dismissed with costs to the respondents who have appeared.

FOSTER, J.—I agree.

Order modified.

APPELLATE CIVIL.

Before Dawson Miller, C. J. and Foster, J.

C. J. SMITH

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May, 31.

v.

A. KINNEY, OFFICIAL TRUSTEE OF BENGAL.*

Limitation Act, 1908 (*Act IX of* 1908), *Schedule I, Articles* 115 *and* 120—*Suit between lessor and lessee regarding mineral rights—Suit compromised and royalty fixed—Suit to recover royalty, limitation for.*

Where a dispute between the proprietor of certain land and his lessee, with regard to the mineral rights, was settled by a decree in terms of a written compromise entered into by the parties to the suit, under which the lessees were liable to pay to the proprietor a specified royalty on the amount of coal raised, *held*, that a suit for recovery of the royalty was governed by Article 115 of the Limitation Act, 1908, as being a suit based upon the agreement of compromise which was an unregistered contract, and not by Article 120.

Kusodhaj Bhakta v. *Brojo Mohan Bhakta*(1), followed.

* First Appeals Nos. 181 and 182 of 1920, from a decision of Baba Brajendra Kumar Ghosh, Subordinate Judge of Dhanbad, dated the 22nd June, 1920.

(1) (1914-15) 19 Cal. W. N. 1228.