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Then, finally, as to the price fetched. The bid-sheet and the order sheet show quite clearly that the Subordinate Judge was doing his very best to help the judgment-debtor to get a better price but no bidders came forward to outbid the decree-holder and of necessity the two mauzas had to be sold for Rs. 32,000 which was offered. There is nothing to show that this price was an inadequate price under the circumstances. It can never be expected that at an auction sale it is possible that the full value of the property can be obtained. The learned Subordinate Judge had good local knowledge, and it is clear that in his opinion the best price available had been obtained for the properties. I see no reason to think that an inadequate price was obtained or that such inadequate price was due to any material irregularity.

I would, therefore, dismiss the appeal with costs in both courts.

DAS, J.—I agree.

*Appeal dismissed.*

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## APPELLATE CIVIL.

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*Before Dawson Miller, C.J. and Adami, J.*

BARA HAPAN MANJHI

v.

GOPI MANJHI.\*

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Dec., 17.

*Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), sections 139(5) and 139A—possession of land voluntarily given up by tenant—suit by tenant to recover possession not barred.*

The plaintiff was a tenant of certain lands to which the Chota Nagpur Tenancy Act, 1908, applied. He placed those lands in charge of the defendants during his absence. On his

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\* Miscellaneous Appeals nos. 223 to 225 of 1925, from a decision of Babu Narendra Lal Bose, Additional Subordinate Judge of Purulia, dated the 3rd June, 1926, reversing a decision of Babu Manindra Nath Mitra, Munsif of Raghunathpur, dated the 9th November, 1925.

return the defendants claimed the lands as their own and refused to quit them. Plaintiff sued for recovery of possession. It was contended that the suit was barred by sections 139(5) and 139A of the Act.

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Section 139A enacts :

" No court shall entertain any suit, concerning any matter in respect of which an application is cognizable by the Deputy Commissioner under section 139.....".

Under section 139(5) :

" All applications to recover the occupancy or possession of any land from which a tenant has been unlawfully ejected by the landlord or any person claiming under or through the landlord,"

are cognizable by the Deputy Commissioner.

*Held*, that the plaintiff never having been ejected from the lands the suit was not barred by sections 139(5) and 139A.

*Dhuplal Sahu v. Bhekha Mahton* (1), referred to.

Appeal by the defendant.

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

*S. C. Mazumdar*, for the appellants.

*G. C. Mukharji*, for the respondents.

DAWSON MILLER, C.J.—The facts of this case as they appear from the judgment of the Munsif and of the Subordinate Judge on appeal are shortly as follows: The plaintiff took settlement of certain lands from the Equitable Coal Company in mauza Nimlikuri in 1322 B.S. He remained in possession of the lands for about two years. Thereafter being laid up with an attack of rheumatism he was compelled to leave the locality and go elsewhere in the interests of his health. He thereupon placed the lands in question in charge of the defendants to look after them on his behalf and if necessary to further his interests in the settlement operations which were about to take place. When he returned after three years

(1) (1926) C. W. N. (Pat.) 223.

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the survey attestation had already taken place and the defendants had apparently had their own names recorded in the survey record as tenants in place of the plaintiff. He thereupon demanded recovery of the lands but the defendants refused to quit contending that the lands had been theirs all along and that the plaintiff was not and never had been entitled to them.

The learned Munsif of Raghunathpur before whom the case came for trial in November 1925 held that such a suit was barred by reason of the provisions of section 139 (5) and section 139A of the Chota Nagpur Tenancy Act. The former section provides that certain suits and applications shall be cognizable by the Deputy Commissioner, and shall be instituted and tried or heard under the provisions of the Act, and shall not be cognizable in any other court, except as otherwise provided in the Act. The suits there referred to include in sub-section (5)

"All suits and applications to recover the occupancy or possession of any land from which a tenant has been unlawfully ejected by the landlord or any person claiming under or through the landlord."

Section 139A provides that

"No court shall entertain any suit, concerning any matter in respect of which an application is cognizable by the Deputy Commissioner under section 139, and the decision of the Deputy Commissioner on any such application shall, subject to the provisions of this Act relating to appeal, be final."

The learned Munsif considered that this was a case of ejection within the meaning of section 139 (5).

The case then went on appeal to the Subordinate Judge. The learned Judge took the view that the suits referred to in sub-section (5) of section 139 were suits which claimed merely a right of possession and did not raise any question of title for the determination of the court. His view apparently was that the suits referred to in the sub-section were possessory suits only, such as are mentioned in section 9 of the Specific Relief Act, that is to say, suits where possession alone is claimed apart altogether from any question of title.

In answer to that finding of the learned Subordinate Judge the defendants in appeal before this court have referred to the case of *Dhuplal Sahu v. Bhekha Mahton* (1), a decision of a Division Bench of this court. In that case the learned Judges are reported to have said that a suit in ejection falling within section 139 (5) is nevertheless barred because it also seeks a declaration of title as well as delivery of possession of the property. In that case the learned Judges considered that the decision on the question of title was merely ancillary to the main object of the suit, namely, possession of the land. We are told that there are other decisions of this court which conflict with that decision. Whether that be so or not it is not necessary for us to determine, for, in my opinion, the suit in question is not one falling within section 139 (5). It is not in fact a suit for the recovery of possession of any land from which a tenant has been unlawfully ejected. The tenant in this case was never ejected at all. What he did was, being in possession of the land, he gave up possession voluntarily to the defendants. He remained away for some years, then returned and when he tried to get back possession the defendants refused to give it up. That, in my opinion, is not a case of ejection. It follows that the result at which the learned Subordinate Judge arrived was, in my opinion, the correct result. He was therefore justified in sending back the case to the Munsif to be tried upon the merits. This appeal will be dismissed with costs.

Miscellaneous appeals nos. 224 and 225 of 1926 were put up to be heard together with this appeal. The facts in each case are similar and the judgment just delivered will govern the other two appeals. There will be one set of costs.

ADAMI, J.—I agree.

*Appeals dismissed.*

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