APPELLATE CIVIL.

Before Das and Adami, JJ.

SRIMATI TULSI MAHATANI

v.

GAJADHAR MARWARI.*

1926.

Nov., 18, 22.

Chota Nagpur Tenancy Act, 1908 (*Bengal Act VI of* 1908), *sections* 3(23), 20, 139 *and* 208—*cess, suit for the recovery of, whether cognizable by Deputy Commissioner—section* 139A, *clause* (3), *scope of—decree for cess, when operates as a rent decree—tenure or holding, sale of, in execution of a decree for cess, effect of—Bengal Rent Recovery Act,* 1865 (*Bengal Act VIII of* 1865), *section* 16, *applicability of.*

Under section 3(*xxiii*) of the Chota Nagpur Tenancy Act, 1908, " rent " includes cess. Therefore a suit for the recovery of cess is a suit for rent within the meaning of section 139(3) (*a*) and is cognizable by the Deputy Commissioner.

Provided certain formalities are adopted, the decree in a suit for cess operates as a decree for rent.

Pitambar Chowdhury v. *Shaikh Rahmat Ali* (1), followed.

Mahanand Chuckerbutty v. *Banimadhab Chatterjee* (2), not followed.

By reason of section 208 of the Chota Nagpur Tenancy Act, section 16 of the Bengal Rent Recovery Act, 1865, applies to a sale of a tenure or holding held under the former Act in execution of a decree for arrears of cess, and the purchaser acquires the property free from all encumbrances subject to the proviso to that section.

Appeal by the plaintiffs.

This appeal arose out of a suit instituted by the appellants to set aside the sale of Mauza Raherdih in which they were interested. The Raja of Panchakoti was the superior landlord. It was not disputed that he granted certain brahmottar rights in the village to one Ramsatya Goswami. The predecessor in title of the present plaintiffs took a lease from the

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* Appeal from Original Decree no. 194 of 1922, from a decision of Maulavi Najabat Husain, Subordinate Judge of Purulia, dated the 17th June, 1922.

(1) (1922) 3 Pat. L. T. 282. (2) (1897) I. L. R. 24 Cal. 27

1926.

SRIMATI TULSI MAHATANI *v.* GAJADHAR MARWARI.

successors in interest of Ramsatya Goswami. The plaintiffs also purchased a certain share of the interest of the brahmottardar. On the 8th April, 1916, the Raja of Panchakoti instituted a suit for the recovery of cess as against the plaintiffs and recovered an ex-parte decree on the 28th June, 1916. On the 2nd April, 1912, the mauza was sold in execution of the decree and was purchased by defendant no. 1 for Rs. 1,000. It appeared that one Babu Bhupati Mazumdar obtained a money decree as against plaintiffs 1 and 4, and on the 15th September, 1916, the share of plaintiffs 1 and 4 in the village and in a certain tank were put up for sale and was purchased by defendant no. 2. The plaintiffs sought in this suit to set aside the sale of the 2nd April, 1917, and that of the 15th September, 1916.

It was the case of the plaintiffs in the Court below that defendant no. 2 was the benamidar of defendant no. 1 and it was in that view that one suit was allowed to be instituted in respect of the two sales.

The Subordinate Judge found that defendant no. 2 was not the benamidar of defendant no. 1; he also held on the merits that the sale of the 15th September, 1916, could not be set aside. The decision of the Subordinate Judge on these points was accepted by the plaintiffs, who were the appellants in the High Court. In regard to the sale of the 2nd April, 1917, the Subordinate Judge came to the conclusion that the plaintiffs had no merit and did not deserve any success in this suit. In that view the Subordinate Judge dismissed the plaintiffs' suit.

A. K. Roy, S. C. Mazumdar and *Janak Kishôre*, for the plaintiffs.

P. K. Sen (with him *A. Sen, A. R. Mukherji* and *B. B. Mukherji*), for the respondents.

22nd Dec. 1926.

DAS, J.—We entirely agree with the view which has been taken by the learned Subordinate Judge. He has taken a great deal of trouble with the evidence

and his judgment shows much industry and ability, and as we entirely agree with his conclusion it will not be necessary for us to deal in detail with the various questions which have been raised before us.

The first question argued before us on behalf of the appellants is that the suit being a suit for recovery of cess was not triable by the Revenue Court; but it is obvious that under section 3, clause (23), of the Chota Nagpur Tenancy Act rent includes cess. Section 139 deals with the jurisdiction of the Revenue Court to take cognizance of suits and it provides inter alia that

> "all suits for arrears of rent on account of agricultural land, whether subject to the payment of rent or only to the payment of dues which are recoverable as if they were rent shall be cognizable by the Deputy Commissioner",

and shall be instituted and tried or heard under the provisions of the Chota Nagpur Tenancy Act and shall not be cognizable in any other Court except as otherwise provided in the Act.

Now, as I have said, rent includes cess, and it is obvious to my mind that section 139, clause (3), paragraph (*a*), clearly provides that a suit for recovery of cess shall be cognizable by the Deputy Commissioner.

It was argued on behalf of the appellants that there is no evidence that the land in respect of which the suit for cess was brought was agricultural land. In my opinion the argument is an idle one and is not deserving of any success. I hold that the Revenue Court had jurisdiction to try the suit.

It was next contended that although the suit may be regarded as a rent suit, still as certain persons interested in the tenure were not made parties to the suit, the decree for cess operated not as a rent decree but as a money decree.

[After discussing the evidence on this point his Lordship proceeded as follows:]

The result is that the decree obtained by the landlord must be regarded as a rent decree.

1926.

SRIMATI TULSI MAHATANI v. GAJADHAR MARWARI.

DAS, J.

It was next argued that although the decree may be regarded as a rent decree, it has still to be considered what property passed under the sale.

Now section 208 of the Chota Nagpur Tenancy Act provides as follows:—

"When a decree passed by the Deputy Commissioner under this Act is for an arrear of rent due in respect of a tenure or holding, the decree-holder may apply for the sale of such tenure or holding, and the tenure or holding may thereupon be brought to sale, in execution of the decree, according to the provisions for the sale of under-tenures contained in the Bengal Rent Recovery (Under-tenures) Act, 1865, and all the provisions of that Act, except sections 12, 13, 14 and 15 thereof, shall, as far as may be, apply to such sale: Provided that the purchaser of a tenure at any such sale shall not be entitled to annul any lease, right or tenancy referred to in clauses (*a*) to (*e*) of section 14 of this Act."

It is not necessary to cite the other provisos contained in section 208 as no reliance is placed on them by Mr. Atul Krishna Ray It is obvious, therefore, that section 16 of the Bengal Rent Recovery Act of 1865 does apply to the sale in this case. Now that section provides as follows:—

"The purchaser of an under-tenure sold under this Act shall acquire it free from all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created or by the subsequent written authority of the person who created it, his representatives or assignees."

It follows, therefore, that the purchaser has acquired the property free from all incumbrances unless the present case comes within the proviso to section 16 which is as follows:—

"Provided that nothing herein contained shall be held to entitle the purchaser to eject khudkast raiyats or resident and hereditary cultivators, nor to cancel bona fide engagements made with such class of raiyats or cultivators aforesaid by the late incumbent of the under-tenure or his representatives except it be proved, in a regular suit, to be brought by such purchaser for the adjustment of his rent that a higher rent would have been demandable at the time such engagements were contracted by his predecessor."

A faint attempt was made by Mr. Atul Krishna Ray to bring his case within the proviso to section 16 of the Bengal Rent Recovery Act, 1865; but there is

no proof whatever that his clients are khudkast raiyats or resident and hereditary cultivators or that they hold under bona fide engagements as such raiyats.

The next point is, whether the case has been brought within the proviso to section 14 of the Chota Nagpur Tenancy Act. That section undoubtedly protects any right of a raiyat or cultivator in his holding or land, as conferred by the Chota Nagpur Tenancy Act or by any local custom or usage. It was strongly contended that at any rate in respect of one rekha of land known as Tharna Rekha and two tanks, the plaintiffs appellants have the rights of raiyats and that therefore this rekha of land and those two tanks are protected from the sale.

The question of fact raised in this argument has been discussed very fully and elaborately by the learned Subordinate Judge, and I see no good reason for differing from the learned Subordinate Judge in the conclusion at which he has arrived. It is sufficient to say that one of the documents in the record (Exhibit M) completely disposes of the case.

So far as the two tanks are concerned, the judgment itself shows that the plaintiffs have no raiyati interest in those two tanks. So far as the one rekha of land known as the Tharna Rekha is concerned Exhibit M shows that Boul Das purchased that land as a co-sharer proprietor from an occupancy tenant. Boul Das represented the whole body of the Mahathas in the transaction and he had co-sharer landlords, and Exhibit M shows that upon such purchase Boul Das held the land paying proportionate rent to his co-sharers and that this land was allotted to Boul Das in the partition which was effected by the judgment in the partition suit. That judgment in the partition suit shows that this land was allotted to Boul Das in the partition.

Now it is obvious that a co-sharer landlord purchasing a holding in execution of a rent decree does not acquire the right of an occupancy tenant. It is

1926.

SRIMATI TULSI MAHATANI v. GAJADHAR MARWARI.

DAS, J.

quite true that he has to pay a proportionate share of rent to his co-sharer landlords, but his interest is not that of a tenant. Section 20 of the Chota Nagpur Tenancy Act makes this position perfectly clear; but whatever the position may have been at the date when Boul Das purchased the occupancy holding, his position was entirely different when this land was allotted to him in the partition which took place thereafter. The whole interest of the tenant and the whole interest of the landlord merged in Boul Das, and, in my opinion, it is impossible to take the view that after the partition Boul Das continued to hold the land as his under-tenant. In my opinion, the plaintiffs have not established that they have any jamai rights or occupancy rights in the village.

It was lastly contended that the sale held in pursuance of the decree for cess operated to transfer only the right, title and interest of the judgment debtors, and a decision of the Calcutta High Court in *Mahanand Chuckerbutty* v. *Banimadhab Chatterjee* (1) was relied upon in support of this proposition. But the Cess Act itself provides that provided certain formalities are adopted the decree in a suit for cess operates as a rent decree. A decision of this Court in *Pitambar Chowdhury* v. *Shaikh Rahmat Ali* (2) is a clear authority for this proposition. Now this point was not raised in the Court below and the appellants could not complain if there are no materials in the record to enable us to decide whether these necessary formalities were or were not taken; but fortunately the materials in the record establish that these essential formalities were in fact adopted in the rent suit. That being so, the decision of this Court in the case just cited is a clear authority in support of the view that that decree must be regarded as a rent decree.

I would dismiss this appeal with costs.

ADAMI, J.—I agree.

Appeal dismissed.

(1) (1897) I. L. R. 24 Cal. 27. (2) (1923) 3 Pat. L. T. 282.