APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

1928.

May, 9.

LACHMAN MAHTO

v.

LALU MAHTO.*

Chota Nagpur Tenancy Act, 1908 (*Ben. Act. VI of* 1908), *sections* 74A(5) *and* 139(6)—*Pradhani right, suit for declaration of—forum.*

A suit for a declaration that the plaintiff is the pradhan of a certain village in Chota Nagpur and for possession, against the sons of the person recorded as pradhan in the record-of-rights, is governed by section 139(6) of the Chota Nagpur Tenancy Act, 1908, and, therefore, must be instituted in the revenue court and not in the civil court.

Tata Iron and Steel Works v. *Raghunath Mahto* (1), referred to.

Appeal by the plaintiff.

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

B. N. Misra and *U.N. Banerjee*, for the appellant.

G. C. Mukharjee for *D. P. Sinha*, for the respondents.

MACPHERSON, J.—The appellant Lachman Mahto instituted a suit in the Court of the Munsif of Hazaribagh for a declaration that he has pradhani right to mauza Sonhar and for possession by dispossessing defendants 1 to 4 who have no such right and for mesne profits in respect of 1979-81 Sambat. These defendants contended that the suit lay in the Revenue Court but the Munsif negatived the contention and decreed a moiety of the reliefs claimed. He held that the plaintiff was entitled to hold half the

*Appeal from Appellate Order no. 241 of 1927, from an order of G. Rowland, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 3rd August, 1927, reversing an order of Babu Raghunandan Prasad, Munsif of Hazaribagh, dated the 10th December, 1926.

(1) (1918) Cal. W. N. (Pat.) 65.

pradhani tenancy while the remainder appertained to the defendants mentioned whose interests therein inter se he did not determine. Plaintiff appealed and the learned Judicial Commissioner was of opinion that if the civil Court had jurisdiction the plaintiff was entitled to have his suit decreed in full but he held that under section 139(*6*) of the Chota Nagpur Tenancy Act, as amended, the suit was properly cognizable by the revenue Court and he directed the plaint to be returned for presentation to that Court. The plaintiff now contests this order in second appeal.

The parties, who are Telis, are descendants of Jhandu who was succeeded as pradhan by Magan the eldest of his three sons. Magan was succeeded by Khetu the eldest of his five sons, Khetu left no sons. Plaintiff is the son of Chetu, second son of Magan. Defendants 1 to 4 are sons of Heru, fourth son of Magan. Heru is entered in the record-of-rights as pradhan. Plaintiff contends that the entry is wrong, that Chetu succeeded Khetu and he by the rule of primogeniture succeeded his father Chetu, while Heru only transacted the business of the village, as manager of his two eldest brothers successively. The defence is that Heru succeeded Khetu and his sons succeeded him.

Section 139 of the unamended Act directed that the following among other suits shall be cognizable by the Deputy Commissioner and shall be instituted and tried and heard under its provisions and shall not be cognizable by any other Court except as otherwise provided in the Act:

(*6*) All suits by or against headman of villages..... for a declaration of title in or possession of, their office or agricultural land, whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant.

This provision was considered in *Tata Iron and Steel Works* v. *Raghunath Mahto* (1). It was there held that the Deputy Commissioner had no jurisdiction

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to try a suit brought by the landlord to eject the pradhan of a village in his estate. But the provision was construed as empowering the Deputy Commissioner to hear suits between the pradhan on the one hand and rival claimants on the other with regard to the right to hold the office coupled with the possession of the lands attached thereto. That decision was pronounced in 1918 and in the amending Act of 1920, sub-section (*6*), appears in the following form—

(*6*) Subject to the provisions of sub-section (*5*) of section 74(*A*), all suits by or against a village-headman for a declaration of title in, possession of, ejectment from or recovery of his office or land comprised in his village-headman's tenancy whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant and whether brought or not by or against the landlord of such land.

It is manifest that this provision evinces the intention of the legislature to place it beyond any possibility of doubt that, save in the case excepted, the forum for all suits by or against a village-headman in respect of his title in and possession of his office or land comprised in his village-headman's tenancy shall be the revenue Court. It is indeed difficult to conceive of any suit in respect of the matters mentioned which could be so framed as to outwit this insistent provision. It was obviously the intention inter alia to expand the original sub-section (*6*) so as to give the Deputy Commissioner the jurisdiction denied to him in the decision cited to try a suit between the landlord and the pradhan while retaining in the Deputy Commissioner all the jurisdiction which he possessed under the unamended sub-section. And as was also held in the decision cited, the Deputy Commissioner indisputably already possessed sole jurisdiction in a suit between rival claimants to the village-headman's office and tenancy. Unless therefore the appellant can show that he comes under the provisions of section 74A(*5*), the decision under appeal is transparently correct.

Now section 74A(*5*) allows a title suit in the civil Court in very restricted circumstances. Section

74A was introduced by the amending Act of 1920. It is a special provision dealing with the determination by the Deputy Commissioner of the person who in certain circumstances should in accordance with custom be village-headman entitled to hold the village-headman's tenancy. The circumstances are that the tenancy which in accordance with the custom is held by a village-headman has for any reason been vacated (such reason may be inter alia the death of or abandonment by or ejectment, legal or illegal, of the previous village-headman) and under sub-section (*1*) three or more tenants holding lands within the tenancy or the landlord may apply to the Deputy Commissioner whereupon under sub-section (*3*) the Deputy Commissioner shall inquire who in accordance with the custom should be village-headman entitled to hold the tenancy and place him in possession if he is not already in possession. Sub-section (*5*) deals only with such a case where the application under sub-section (*1*) is pending or where the Deputy Commissioner has determined the matter under sub-section (*3*) in which events it bars every other suit and application concerning the matter except a title suit in the civil Court instituted within one year of the date of the Deputy Commissioner's order under sub-section (*3*) to establish the right of the plaintiff to succeed to the tenancy. On the other hand the last sub-section of section 74A lays down that when a matter is substantially in issue or has been substantially in issue and has been determined in a suit under section 139(*6*) no application shall lie under section 74A(*1*). It is clear that it was open to appellant to bring a suit but that under section 139(*6*) it lay exclusively in the revenue Court and section 74A(*5*) has no application.

This appeal is accordingly without merits and I would dismiss it with costs.

KULWANT SAHAY, J.—I agree.