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decree-holder is entitled to attach the partnership property..... If the decree is not satisfied he may proceed to put up to sale the two annas share in the partnership business which it is alleged belongs to his judgment-debtor. If any such sale takes place it will then be open to the purchaser or to the other partners to apply to have the partnership wound up and an account stated."

This case was decided before Order XXI, rule 49, was enacted but I think that what has been laid down there is still good law (with the exception perhaps of the remarks relating to the attachment of partnership property as distinct from the right, title and interest of the individual partner against whom a decree may have been obtained) and indicates one of the courses open to the creditor who has obtained a decree against one of the partners in the partnership.

I do not think I can usefully add to the judgment of my learned brother on the questions of fact which have been decided by him in favour of the plaintiff and I shall only say here that I entirely agree with his conclusions. I, therefore, concur in the order proposed by him that this appeal should be allowed with costs.

Appeal allowed.

APPELLATE CIVIL.

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April, 11.
May, 4.

Before Scroope, J.

KHARRA MAJHI

v.

ABINASH CHANDRA CHAKRAVARTTI.*

Chota Nagpur Tenancy Act (Act VI of 1908), sections 84(3) and 94—suit for rent—plaintiff, whether entitled to

* Appeal from Appellate Decree no. 1106 of 1929, from a decision of Rai Bahadur Amrita Nath Mitra, Judicial Commissioner of Manbhum, dated the 23rd April, 1929, reversing a decision of Babu Kshetra Mohan Kumar, Munsif-Deputy Collector of Raghunathpur, dated the 31st July, 1928.

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claim in excess of the rent entered in the record-of-rights even when presumption of correctness is rebutted—section 94, purpose and significance of.

Section 84, clause (*3*), Chota Nagpur Tenancy Act, 1908, provides :

" Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved, by evidence, to be incorrect."

Section 94 of the Act lays down :

" When the rent of an occupancy holding is entered in a record-of-rights which has been prepared and finally published under this Chapter or any law in force before the commencement of this Act, then, subject to the provisions of sections 87, 89 and 90.....no demand for rent in respect of an occupancy holding in excess of the amount entered in the said record-of-rights, shall be enforceable, save as provided in this Chapter or in section 32."

Held, that section 94 overrides section 84(*3*) and, therefore, that a demand for rent in respect of an occupancy holding in excess of the amount entered in the record-of-rights, is not enforceable, although the presumption of correctness attaching to the record-of-rights is rebutted by evidence.

Janardhan Kishore Lal Singh Deo v. *Kali Pada Tewari*(1), dissented from.

Section 94 is designed to prevent parties, who have not availed themselves of the opportunity provided by the Act for revision of rents, from re-opening the question in an ordinary suit for rent and is based upon the special conditions of Chota Nagpur.

Appeal by defendant no. 2.

The facts of the case material to this report are stated in the judgment of the court.

A. B. Mukharji and *N. N. Banerji*, for the appellant.

Radha Shyam Chattarji, for the respondents.

SCROOPE, J.—The suit out of which this appeal arises is one of a batch of 8 suits for recovery of rent

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and cesses for the years 1331 to 1334 in respect of holdings in mauza Muldih. In the present suit no. 483 of the Munsif's Court an annual rent of Rs. 24 exclusive of cess was claimed but the case for the two tenant-defendants who are brothers was that they with the defendants in suits 484, 485 and 487-89 jointly held two tenancies under the plaintiff bearing khata numbers 5 and 6, the annual rent of the former being Rs. 4 and of the latter Rs. 10 plus cess of 7 and 5 annas, respectively. They alleged that the plaintiff had wrongly sued them for rent by splitting up these two holdings into a number of different holdings and apportioning them amongst the different members of the family. The plaintiff produced in support of his case previous decrees: but the first Court held against him as the total amount of rent demanded in the different suits 483-485 and 487-489 was Rs. 63-10-0 which was much in excess of the rent recorded in the khatians for the two khatas and as section 94 of the Chota Nagpur Tenancy Act provides that no demand for rent in respect of an occupancy holding in excess of the amount entered in the record-of-rights shall be enforceable except in circumstances which admittedly do not apply here; the learned Munsif accordingly dismissed the suit out of which this appeal arises along with the suits the numbers of which I have given above because, as I say, the total rent claimed in them was in excess of the rent recorded in the khatians as payable for the two holdings in possession of the defendants.

On appeal to the Judicial Commissioner, he held that section 94 did not override section 84 which only gives a presumptive value to the record-of-rights and that the presumption had been rebutted by the previous decrees. He, therefore, allowed the appeal of the landlord and decreed the suit for the amounts claimed. For the view he has taken of section 94 of the Chota Nagpur Tenancy Act he relies on an unreported decision of a single Judge of this Court: *Janardan*

Kishore Lal Singh Deo v. *Kali Pada Tewari*(1) the relevant portion of which runs as follows:—

"Section 94 after providing that when the rent of an occupancy holding has been entered in the record-of-rights the rent shall not be enhanced or reduced for the period therein stated except on specified grounds, enacts that 'no demand for rent in respect of an occupancy holdings, in excess of the amount entered in the said record of rights, shall be enforcible save as provided in this Chapter or in section 32', etc. Now, that makes the record of rights the criterion of the rate of rent; but the authority of the record of rights itself is defined in section 84 in that Chapter in this way; that 'every entry in a record of rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved, by evidence, to be incorrect'. This rate of rent in the record of rights can have no higher authority than the record itself. It is not irrebuttable, but may be rebutted by evidence. Where there are decrees of a civil court it is clearly rebutted, because the matter is res judicata and it is not competent to the Settlement Officer to overrule the decision of the civil court".

With very great respect I am entirely unable to agree with the view of the law taken here. The learned Advocate for the respondent in support of this interpretation draws my attention to section 113(*1*) of the Bengal Tenancy Act; but that section only provides the period for which rents settled under Chapter X of the Bengal Tenancy Act are to remain unaltered: whereas section 94 of the Chota Nagpur Tenancy Act applies to rents entered in the record-of-rights irrespective of the question whether there has been a settlement of rent or not: in fact irrespective of how the rental has been fixed. If the interpretation of the section be in accordance with that adopted in the decision cited above and relied

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on by the learned Judicial Commissioner then this provision in section 94 becomes entirely meaningless as the learned Munsif has pointed out. In my opinion the view adopted by the learned Munsif was entirely correct. There is no hardship either in this interpretation; the landlord can ask for settlement of fair rent under section 85; he can apply under section 87 for correction of the entry; he can also apply to the Revenue Officer for revision under section 89. This provision in section 94 is designed to prevent parties, who have not availed themselves of the opportunity provided by the Act for revision of rents, from re-opening the question in an ordinary rent suit and is based upon the special conditions of Chota Nagpur.

There is another reason also why the suit must fail; it has not been shown by the plaintiff that the previous decrees (Exhibits 6 and 6*a*) related to the lands now in suit. The land subject of the previous decree (Exhibit 6) which is dated 20th October, 1911, is described as follows:—

"SCHEDULE OF LAND:

One plot below *Majhi bundh*:—

East—Plaintiff's *khas danga* (high land).

West—Border of *ar* (embankment) of *Majhi bundh* in the *khas* possession of the plaintiff.

North—Border of the *bari* in the *khas* possession of the plaintiff.

South—Border of land below *Majhi bundh* in the *khas* possession of the plaintiff."

In Exhibit 6*a*, the decree, dated the 17th December, 1923, the description is simply, "one plot below *Majhi bundh*" (sic). In this area a record-of-rights had been finally published—the exact date of final publication does not appear—but evidently it was after 1923 and before the institution of the present suit.

In the present set of rent suits which plaintiff filed in 1928 he gave no description of the land at all

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as he was required to do by section 144 of the Chota Nagpur Tenancy Act which further requires that where a record-of-rights has been finally published the plaint shall contain a list of the survey plots comprising the tenancy, a statement of the rent of the tenancy according to the record-of-rights and a copy of entries in the record-of-rights regarding the subject-matter of the suit; later on, however, he amended his plaint and supplied for the rent suit out of which this appeal arises plot numbers 231-242; he thus complied with the first requisite of section 144 but not with the other two; but above all he made no attempt to prove that the plot numbers specified corresponded with the land covered by the previous decree and it was incumbent on him to do this as defendants had taken objection regarding the specification of the holdings in their written statement. What the plaintiff has done is, in order to effect a nominal compliance with section 144, to take a certain number of plots out of the defendants' joint khata and distribute them at random over the different suits; for no attempt at all has been made to prove any identity; this is the second reason for which the suit must fail; and the third reason is that a statement of rent of the tenancy according to the record-of-rights has not been supplied.

It was argued for the respondents that this appeal was barred by res judicata and the contention seems to be this: in the other seven suits the appeal lay to the Deputy Commissioner who decreed them all following the unreported judgment referred to above; but the present appeal lay to the Judicial Commissioner as the amount sued exceeded Rs. 100. The argument is that the question whether the plaintiffs are entitled to realize rent on the basis of their previous decree or according to the record-of-rights has been finally decided by the Deputy Commissioner in favour of the plaintiffs in those appeals and is, therefore, res judicata now. There is no substance in this. The holding in the present suit is quite a

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different holding according to the plaintiffs' case from the holdings in the other suits and in each one of those suits different holdings are involved; and the plaintiffs' plea was supported by different decrees in each case; so obviously no question of res judicata arises, the subject-matter of dispute being different in each case.

SCROOPE, J. For these reasons this appeal must succeed. The decision of the learned Judicial Commissioner is set aside and the plaintiffs' suit dismissed with costs throughout.

Appeal decreed.

APPELLATE CIVIL.

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April, 14, 15.

Before Wort and Fazl Ali, JJ.

RAMYAD MAHTON

v.

RAM BHAJU MAHTON.*

Letters of Administration—objector claiming to be joint with the testator, whether has locus standi to object to the grant even where citation has been served on him—Succession Act, 1925 (*Act XXXIX of* 1925), section 283.

An objector who claimed that he was joint with the testator and that the property which the testator purported to dispose of by will was joint Hindu family property has no *locus standi* to object to the grant of the letters of administration even where citations have been served upon the objector.

Kalajit Singh v. *Parmeshwar Singh*(1), *Abhiram Dass* v. *Gopal Das*(2) and *Srigobind Pershad* v. *Mussammat Laljhari*(3), followed.

Jamni Hanmantha Rao v. *Aratala Latchamma*(4), referred to.

* Appeal from Original Decree no. 177 of 1929, from a decision of F. G. Rowland, Esq., I.C.S., District Judge of Patna, dated the 2nd September, 1929.

(1) (1917) 1 Pat. L. W. 308.
(2) (1889) I. L. R. 17 Cal. 48.
(3) (1909) 14 Cal. W. N. 119.
(4) (1928) A. I. R. (Mad.) 1193.