APPELLATE CIVIL.

Before Adami and Kulwant Sahay, JJ.

BHAIRO NATH ROY

v.

SHANKE PAHAN.*

1926.

June, 30.

Zarpeshgi lease—bona fide settlement of raiyati lands by zarpeshgidar, whether binding on lessor.

In the absence of a covenant in a zarpeshgi lease restricting the powers of the zarpeshgidars as regards the settlement of raiyati lands, the lessees are entitled in the ordinary course of management to induct tenants upon raiyati lands, and such bona fide settlement of land by the zarpeshgidars is binding upon the proprietor or person who had granted the zarpeshgi.

Sheo Barat Singh v. *Padarath Mahto* (1) and *Thakur Pitambar Singh* v. *Khago Kumar* (2), followed.

Appeal by the plaintiff.

This was an appeal by the plaintiff and it arose out of a suit brought by him for recovery of possession of one pawa of land known as Dabar Chaun Don in the village of Guria. The plaintiff was admittedly the landlord. The defendant claimed to be a tenant of the land. The plaintiff's case was that the land was in his possession as proprietor and he had let it out at first in bhagut bandha mortgage to one Durjodhan Manjhi and later in zarpeshgi to Chaitan Munda, Mangra Munda, Dondra Pahan and Jhirka Munda. The zarpeshgi was granted in 1895 and it was redeemed in the Sambat year 1975. The plaintiff's case was that after redeeming the zarpeshgi he wanted to take possession but he was resisted by the defendant in respect of the land in dispute. The plaintiff said that this land was a part of the bakasht land and the defendant had no right to remain in possession. The defendant's case was that it was not the bakasht land of the proprietor but it was his

*Appeal from Appellate Decree no. 158 of 1924, from a decision of Rai Bahadur Amrita Nath Mitter, Subordinate Judge of Ranchi, dated the 12th July 1923, confirming a decision of W. G. Lacey, Esq., Subdivisional Officer, Munsif of Khunti, dated the 19th January 1922.

(1) (1919) 52 Ind. Cas. 473. (2) (1917) 39 Ind. Cas. 521.

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ancestral raiyati land. He relied upon the entry in the survey khatian which showed the defendant as a raiyat in respect of the land in dispute. Both the courts below held that the land in dispute was not the ancestral raiyati land of the defendant. It was found by the Subordinate Judge on appeal that the land in dispute was not manjihas land or the proprietor's private land in which no right of occupancy could be acquired but that it was land in the khas possession of the proprietor and appertained to the raiyati class of lands. The finding further was that the defendant was inducted as a tenant upon the land in dispute by the zarpeshgidars during the period of the zarpeshgi. It was further found that the settlement by the zarpeshgidars with the defendant was not a collusive settlement but a bona fide settlement. The Subordinate Judge further found that the plaintiff's evidence as regards possession and dispossession by the defendant was hopelessly conflicting and he agreed with the Munsif in holding that the defendant had been in possession at least from the date of the survey and settlement which was more than 12 years before the institution of the suit. The position therefore was that the defendant was inducted upon the land by the zarpeshgidars who had taken the land in zarpeshgi from the plaintiff for a period of time; and the said period having expired and the zarpeshgi having been redeemed, the question was, whether the plaintiff was entitled to take possession of the land on the condition on which he had granted the same in zarpeshgi to the zarpeshgidars on ejecting the defendant. The Subordinate Judge found that the zarpeshgidars were in the same position as lessees; that lessees are entitled in the ordinary course of management to induct tenants upon raiyati lands; and that such settlement of land by the zarpeshgidars would be binding upon the proprietor or the person who had granted the zarpeshgi. He relied upon the observations of the Patna High Court in *Sheo Barat Singh* v. *Padarath Mahto* (1) and *Thakur Pitambar Singh* v. *Khago Kumhar* (2).

(1) (1919) 52 Ind. Cas. 473. (2) (1917) 39 Ind. Cas. 521.

Anand Prasad, for the appellant.

S. Dayal, for the respondent.

KULWANT SAHAY, J. (after stating the facts set out above, proceeded as follows): It has been argued on behalf of the plaintiff in second appeal that the zarpesgidar had no right to settle tenants upon the lands which were in the possession of the plaintiff at the time when the zarpeshgis were granted. In my opinion there is no substance in this contention; unless there is a restriction in the zarpeshgi lease itself restricting the power of the zarpeshgidar as regards the settlement of raiyati lands, the zarpeshgidar in the ordinary course of management would be entitled to settle raiyati lands with tenants. The cases cited by the learned Vakil for the appellant refer to zirat lands or lands which were private lands of the proprietor and to which no right of occupancy could be acquired. Those cases are different from the raiyati lands which are temporarily in possession of the landlord and which are known technically as bakasht lands. Such lands are primarily raiyati lands but are held by the proprietor for the time being on account of surrender or abandonment or purchase in execution of decrees or by such other means. Such lands retain the character of raiyati lands and occupancy right is acquired as soon as such lands are settled with settled raiyats of the village. In any case here the finding is that the defendant has been in possession for more than 12 years and has therefore acquired an occupancy right. Having regard to the finding arrived at it is clear that the plaintiff is not entitled to eject the defendant. His argument is that the zarpeshgidars had no right to create encumbrances or commit acts of waste in respect of the land given to them in zarpeshgi. If the zarpeshgidars have done any such thing the remedy of the plaintiff would be against them As against the tenant who is the only defendant in the present suit no such claim can be raised and the settlement with him which has been found to be a bona fide settlement cannot be held to

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be invalid on account of any act done by the zarpeshgidar to the detriment of the plaintiff. I am of opinion that the decision of the learned Subordinate Judge is correct and this appeal must therefore be dismissed with costs.

ADAMI, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Das and Ross, JJ.

KAYASTHA TRADING AND BANKING CORPORATION, GORAKHPUR

v.

JAI KARAN LAL.*

1926.

July, 2.

Companies Act, 1913 (*Act VII of* 1913), *sections* 199, 200 *and* 201—*Order in winding up proceedings—Transfer to court in another province for execution, whether should be to High Court or District Court.*

The High Court at Allahabad having made an order in certain liquidation proceedings pending before it, transferred the order for execution to the court of the District Judge at Gaya, in the Province of Bihar and Orissa. The District Judge of Gaya held that he was not competent to deal with the case and struck off the execution.

Section 199, Companies Act, provides : " All orders made by a Court under the Act may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced. " It is further provided by section 200 of that Act that " Any order made by a Court for or in the course of a winding-up of a company shall be enforced in any place in British India other than that in which such court is situate by the court which would have had jurisdiction in respect of such company if the registered office of the Company had been situated at such place ". Section 201 requires the last mentioned court to take the requisite steps in the matter.

Held, that the court described in sections 200 and 201 is the High Court and not the District Court.

*Appeal from Original Order nos. 8 and 9 of 1926, from an order of F. F. Madan, Esq., I.C.S., District Judge of Gaya, dated the 7th November 1925.