

1926.

MIDNAPORE  
ZAMINDARY  
Co., LTD.,  
v.  
MUKTAKESHI  
PATRANI.  
KULWANT  
SAHAY, J.

in clause 12 and some of the subsequent clauses. The words "now held by the ghatwals" in clause 12 to my mind are not restricted to the area which was then under actual cultivation, but they refer to the lands then held in possession by the ghatwals. This clause dealt with all lands in the excess area which were cultivable or might become cultivable. Clause 10 dealt with jungle and waste lands and clause 12 with arable lands and these two clauses covered the entire area in excess of the real ghatwali land then in possession of the ghatwal. The real intention of the parties seems to be that the entire excess area, declared to be mal, was to continue in possession of the ghatwals on payment of rent to the zamindar and their status was recognized as tenure-holders, their rights over jungle and waste lands and cultivable lands being separately defined—the object being that whereas before the rafa nama the zamindar used to get nothing for the excess area, by the rafa nama he got a proportion of the income by way of rent and certain rights over the jungles. The construction placed on the rafa nama by the courts below seems to be correct.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Das and Adami, JJ.*

BHUPLAL SAHU

v.

BHEKHA MAHTO.\*

1926.

May, 14.

*Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), sections 139(5) and 139A, scope of—suit for declaration of title and recovery of possession of occupancy holding—whether can be entertained by a civil court.*

\*Appeal from Appellate Decree no. 669 of 1923, from a decision of Babu Amrita Nath Mitter, Subordinate Judge of Palamau, dated the 17th May, 1923, confirming a decision of Babu Narendra Lal Bose, Munsif of Palamau, dated the 16th March, 1923.

Section 139 of the Chota Nagpur Tenancy Act, 1908, declares :

" The following suits and applications shall be cognizable by the Deputy Commissioner and shall be instituted and tried or heard under the provisions of this Act and shall not be cognizable in any other court except as otherwise provided in this Act—

\* \* \* \* \*

(5) all applications to recover the occupancy or possession of any land from which a tenant has been unlawfully ejected by a landlord or any person claiming under or through the landlord."

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, and the decision of the Deputy Commissioner on any such application.....shall be final."

Where, therefore, the plaintiff sued to recover possession of a certain holding on the ground that he had been dispossessed by the defendant who had been put in possession by the landlord, and also asked for a declaration that he had a right of occupancy in the holding.

*Held*, that the suit was of the nature mentioned in section 139(5) and, therefore, that it was barred by section 139A.

*Held*, further, that the question whether the plaintiff had an occupancy right or not in the land was merely a point in the evidence and that the suit was not excluded from the operation of section 139A by the mere fact that the declaration of the plaintiff's title as occupancy raiyat was asked for.

Appeal by the defendant.

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

*D. P. Sinha*, for the appellant.

*Jadubans Sahay*, for the respondent.

ADAMI, J.—In the suit giving rise to this second appeal the plaintiff sought to recover possession of a certain holding on the ground that he has been dispossessed by the defendant who had been put in possession of the holding by the landlord. He also asked for a declaration that he had right of occupancy in the holding. In the trial court the question was considered whether under the provisions of section

1926.

DHURLAL  
SAHU  
v.  
BHEKHA  
MAHTO.

1926.

DHUPPAL  
SAHU  
v.  
BHEKHA  
MAHTO.

ADAMI, J.

139A of the Chota Nagpur Tenancy Act the suit could lie in a Civil Court. The Munsif decided that it could, because it was not merely a suit under section 139, sub-section (5), but was a suit for a declaration of the plaintiff's title as an occupancy raiyat. Therefore the Munsif held that the suit would lie in the Civil Court, it not being a suit exclusively of the nature mentioned in sub-section 5 of section 139 and therefore section 139A would not apply. In the Appellate Court this question does not seem to have been raised. Before us the question was raised again and it was contended that no suit would lie in the Civil Court.

Section 139A was added to the Chota Nagpur Tenancy Act in 1920 and was extended to the district of Palamau, in which the land in dispute lies, in 1920. Therefore it was in force at the time the present suit was instituted. Under that section the Civil Courts are precluded from entertaining any suit

"concerning any matter in respect of which an application is cognizable by the Deputy Commissioner under section 139."

Under section 139, sub-section (5), as it stood at the time of the institution of the suit, it was provided that 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 could only be brought before the Court of the Deputy Commissioner. Therefore it would seem that the present suit which was based on the allegation, that the plaintiff had an occupancy right in the land, but had been dispossessed by the defendant, whom the landlord set up as a tenant in order to get rid of the plaintiff, would seem to be clearly barred by the provisions of section 139A.

It is argued, however, that, since in the plaint a declaration was asked of the plaintiff's title as an occupancy raiyat, the suit was not merely a suit of

the nature mentioned in section 139, sub-section (5), but involved a question of title, so the provisions of section 139A would not apply. As a matter of fact the point whether the plaintiff had an occupancy right or not in this land was merely a point in the evidence. It was not necessary really to ask for that relief, for in order to recover possession the plaintiff would have to show that he was an occupancy raiyat. In my opinion the case is not excluded from the operation of section 139A by the mere fact that the declaration was asked for.

I would hold that this suit was in fact barred under the provisions of section 139A and section 139, sub-section (5), of the Chota Nagpur Tenancy Act and that the plaint should have been filed in the Court of the Deputy Commissioner. I would therefore allow the appeal with costs, and dismiss the plaintiff's suit, with costs in all the courts.

DAS, J.—I agree.

*Appeal allowed.*

---

## APPELLATE CIVIL.

---

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

RAM PRASAD SAH

*v.*

MUSSAMMAT FULPATI KUER.\*

1926.

*May, 24.*

*Code of Civil Procedure, 1908 (Act V of 1908), section 109. (a)—order refusing leave to appeal in forma pauperis, whether a final order.*

An order of the court refusing leave to appeal in forma pauperis is not a final order within the meaning of section 109 (a) of the Code of Civil Procedure, 1908.

*Sakan Singh v. Gopal Chandra Neogi (1), followed.*

---

\*Privy Council Appeal no. 40 of 1925.

(1) (1903-04) 8 Cal. W. N. 296. F. B.