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MAINI MISSIR v. KING-EMPEROR.

DAWSON MILLER, C.J.

open and even after the neighbouring mela had started on the 5th March still the petitioner kept his own mela open and the two were running concurrently notwithstanding the order passed by the Subdivisional Officer. It was therefore a clear breach of the order passed. I do not think therefore that any case is shewn for quashing the proceedings or for interfering in any way. At the same time I cannot help feeling that as the affair has passed off without any breach of the peace, without any inconvenience and without subjecting anybody to annoyance, that the matter has now assumed a very different form. The petitioner did in fact, although not till after proceedings were taken by a complaint being lodged by the Magistrate, pay his share of the cost of the armed police, and I have no doubt that even without those proceedings it would eventually have been recovered. However that may be, I think, if the case is persisted in, and the petitioner should be found to have committed the offence, his punishment would probably be nominal, but that is no reason why we should at this stage interfere. The application is dismissed.

FOSTER, J.—I agree.

Application dismissed.

APPELLATE CIVIL.

Before Das and Adami, JJ.

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April, 27.

MAHARAJA PRATAP UDAINATH SAH DEO

v.

LAL GOBIND NATH SAH DEO.*

Chota Nagpur Tenancy Act, 1908 (*Bengal Act VI of* 1908), *section* 139(2), *significance of—suit by landlord against tenure-holder for rent of agricultural land, whether cognizable by Deputy Commissioner.*

*Appeal from Original Decree no. 62 of 1923, from a decision of Maulavi Chaudhari Muhammad Nazir Alum, Deputy Collector of Ranchi, dated the 31st January, 1923.

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Plaintiff was the proprietor of an estate in Chota Nagpur which included a tenure *K*. This tenure, which was liable to plaintiff for the payment of a certain annual rent, was put up for sale on account of arrears of rent due from the tenure-holder. A portion of the tenure, however, was exempted from sale under the proviso to section 208, Chota Nagpur Tenancy Act, and the remaining portion of the tenure was sold and purchased by *B*. who obtained possession of it. On account of this sale the plaintiff had to apportion the rent in respect of the portion excluded from the sale and the portion sold. The defendant tenure-holder having defaulted in the payment of rent the plaintiff brought the present suit for the recovery of the rent apportioned. The Deputy Collector was of opinion that he had no jurisdiction to apportion the rent in a case of this nature under section 139, Chota Nagpur Tenancy Act.

Section 139(*2*) provides that

"all suits and applications for the determination of the rent payable by any tenant for agricultural land" "shall be cognizable by the Deputy Commissioner, and shall be instituted, 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."

Held, (*i*) that the suit was cognizable by the Deputy Collector under section 139(*2*), Chota Nagpur Tenancy Act; (*ii*) that the mere fact that the defendant was not a raiyat but a tenure-holder would not exclude the case from the operation of section 139, provided he was collecting rent in respect of agricultural land.

In order that section 139(*2*) may apply it is not necessary that the defendant should be an agricultural raiyat, but it is necessary that the rent should be payable for agricultural land.

Appeal by the plaintiff.

The material facts of the case are stated in the headnote.

S. M. Mullick and *B. C. De*, for the appellant.

A. K. Roy for the respondents.

DAS, J.—The learned Deputy Collector was right in saying that there was no contract between the landlord and the tenants in this case to pay any

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definite rent for the disputed land; but he was wrong in dismissing the suit on the ground that he had no jurisdiction to apportion the rent in a case of this nature. Section 139(2) of the Chota Nagpur Tenancy Act provides that all suits and applications for the determination of the rent payable by any tenant for agricultural land 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.

The defendant, it is true, is not a raiyat but he is a tenure-holder, and if he is collecting rent in respect of agricultural land, then clearly a suit for the determination of the rent payable by him comes expressly under the provision of section 139 of the Chota Nagpur Tenancy Act. In order that section 139(2) may apply, it is not necessary that the defendant should be an agricultural raiyat, but it is necessary that the rent should be payable for agricultural land.

Now the learned Deputy Collector does not say that the land in respect of which the apportionment of rent is claimed is not agricultural land. Agricultural land has not been defined in Chota Nagpur Tenancy Act, and it would appear that this omission is intentional.

It is pointed out by Mr. Rampini in his well-known work on the Bengal Tenancy Act that the question of determining to what classes of land the Act should be applicable was felt to be a difficult one and so it was left to the courts to overcome the difficulties involved in its solution.

We are informed that the record-of-right shows that there are numerous raiyats in these villages from whom the defendant collects rent. If that be so, clearly the land is agricultural land. At all events, if it is land to which the Chota Nagpur Act

applies, there is no reason to take the view that it is not agricultural land.

I would allow the appeal, set aside the order of the learned Deputy Collector, and remand the case to him for disposal according to law.

ADAMI, J.—I agree.

APPELLATE CIVIL.

Before Ross and Kulwant Sahay, JJ.

MIDNAPORE ZAMINDARI COMPANY, LTD.

v.

MUKTAKESHI PATRANI.*

Limitation Act, 1908, (*Act IX of* 1908), *Schedule* 1, *Article* 132—*malikana, suit for the recovery of, after declaration of title—plaintiff entitled to recover although claim for declaration barred—" malikana ", meaning of—Article* 132—*suit on the basis of an instrument resisted in former litigation —estoppel.*

Plaintiff, who had in an earlier litigation resisted a certain rafanama, brought the present suit for the recovery of a certain sum as malikana in respect of a village, after a declaration of her right to receive the same, and pleaded, on the basis of the same rafanama, that the village in question was a ghatwali village and that there had been disputes to settle which the rafanama had been drawn up. The defence was, *inter alia*, first, that the plaintiff was estopped from bringing the suit on the basis of the rafanama; secondly, that the right to recover the malikana was barred as the plaintiff could no longer claim a declaration of her right to receive malikana; thirdly, that the malikana claimed did not fall within the term " malikana " referred to in the *Explanation* to Article 132, Schedule 1, Limitation Act, which referred only to malikana under the Bengal Regulations.

*Appeal from appellate Decree no. 209 of 1923, from a decision of W. H. Boyce, Esq., I.C.S., District Judge of Manbhum, dated the 4th November, 1922, confirming a decision of Babu Kamala Prasad, Subordinate Judge of Purulia, dated the 18th April, 1922.