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holding that the statements made by the witnesses are contradictory to those recorded by the police.

I, therefore, respectfully dissent from the contrary view taken in the cases referred to above, and agree with the view expressed by Sen, J. in *Chedi Prasad Singh* v. *The King-Emperor* (1).

JWALA PRASAD, J.

I also agree with the order passed by my learned brother in all these cases.

S. A. K.

Rule discharged.

APPELLATE CIVIL.

Before Das and Kulwant Sahay, JJ.

SATYENDRA NARAYAN

v.

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Bengal Tenancy Act, 1885, (*Beng. Act VIII of* 1885), *sections* 5(5), 120(2) (*a*)—*deeds executed subsequently to* 1*st March*, 1883, *recitals in, whether admissible—tenant, area held by, being less than* 100 *bighas—presumption as to raiyati* interest, whether arises.

Recitals in deeds executed subsequently to the 1st March, 1883, are relevant evidence and have to be taken into consideration in deciding whether lands are proprietor's private lands or not.

Although there is a presumption in favour of the interest of a tenant being that of a tenure-holder if the land exceeds 100 standard bighas, there is no such presumption under the

*Appeal from Appellate Decree no. 724 of 1925, from a decision of Babu Narendra Nath Chakravarty, Subordinate Judge of Monghyr, dated the 23rd December, 1924, modifying a decision of Babu Dwarka Prasad, Munsif of Begusarai, dated the 18th August, 1923.

(1) (1927) 8 Pat. L. T. 613.

Bengal Tenancy Act, 1885, in favour of the land being raiyati land because the area held by the tenant is less than 100 bighas.

Appeal by the plaintiffs.

The facts of the case material to this report will appear from the judgment of Das, J.

N. C. Sinha and *Dinesh Chandra Varma*, for the appellants.

A. B. Mukharji and *B. B. Mukharji*, for the respondents.

DAS, J.—In this suit the plaintiffs claim to recover khas possession of certain specific plots of land. The defendants are recorded as tenure-holders and the plaintiffs claim that in the events which have happened they are now entitled to recover khas possession of those lands.

It is not disputed that the predecessors in title of the plaintiffs executed two successive leases in favour of Raja Ram, the predecessor in title of the defendants first party. The earlier of the leases began in 1302 and was from 1302 to 1311. The latter of the leases was from 1315 to 1321. The plaintiffs as landlords are entitled to recover possession of these lands unless the defendants have established some title to the same. Now the defendants contend that they are occupancy raiyats and the plaintiffs are not entitled to recover khas possession of the lands. The plaintiffs say, in the first place, that the lands are the proprietor's private lands and that, therefore, no right of occupancy can be acquired in those lands. In the second place, they contend that the defendants are mere tenure-holders and as their lease has expired, they must make over possession to them. Both these points have been decided against the plaintiffs by both the Courts below. In my opinion the decisions of the Courts below are erroneous and ought to be set aside.

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I will first consider the question whether the disputed lands are the proprietor's private lands. Now, the lower appellate Court has proceeded upon the view that

> " recitals in deeds executed subsequently to the 1st March, 1883, are rendered inadmissible in evidence by section 120, clause 2(*a*) of the Bengal Tenancy Act, and the word ' Khudkast ' does not conclusively connote proprietor's private lands ".

The latter part of the proposition may be correct, but it is no longer open to doubt that the view of the Courts below as expressed in the first sentence quoted above is incorrect. The Judicial Committee of the Privy Council has now held that recitals in deeds executed subsequently to the 1st March, 1883, are relevant evidence and have to be taken into consideration by the Courts in coming to the conclusion whether lands are proprietor's private lands or not. It appears that in this case there are recitals in the leases going to show that the disputed lands are the proprietor's private lands. The Courts below refused to consider the evidence as furnished by the recitals as, in their view, they were inadmissible in evidence. In my opinion this view can no longer be maintained having regard to the recent decision of the Judicial Committee. As I read the judgment of the learned Subordinate Judge he gives no other ground for coming to the conclusion that the disputed lands are not the proprietor's private lands.

So far as the second point is concerned, it is worthy of note that the learned Subordinate Judge does not base his decision on a construction of the leases. I should have thought that there being written leases in this case he should have directed his mind to the question whether on the terms of the document the lease can be said to be a cultivating lease or not; but he gives two grounds for coming to the conclusion that the leases are cultivating leases. He says that

> " the kabuliyats Exhibits 2 and 2(*a*) mention that the executants will not claim right of occupancy in the lands;"

and in the view of the learned Subordinate Judge

" this goes to show that the parties had in contemplation a raiyati settlement."

This may or may not be so, but in my opinion this is not a ground by itself sufficient to enable the Court of facts to come to the conclusion that the lease is a cultivating lease.

The second ground which the learned Subordinate Judge assigns is

" that in the patta of 1888, when the entire 60 bighas of the alleged, kawat lands were settled, the settlement was taken for the purpose of cultivation."

Now, in this case we are not concerned with the patta of 1888. We are concerned with the patta of 1907, and it is entirely irrelevant to consider what the settlement was under the patta of 1888. The learned Subordinate Judge gives another reason and it is that the presumption of law is in favour of the defendants first party as the area held by them does not exceed more than 100 standard bighas. But I can find nothing in law to justify the view that there is a presumption in favour of the land being raiyati land, because the area held by the tenant is less than 100 bighas. There would undoubtedly be a presumption in favour of the interest of the tenant being that of a tenure-holder if the land exceeds 100 standard bighas; but there is no other presumption so far as I can see on the terms of the Bengal Tenancy Act. In my opinion each and every ground given by the learned Subordinate Judge on this part of the case is, in point of law, erroneous.

I would, therefore, allow this appeal, set aside the judgments of the Courts below and remand this case to the Court below for disposal according to law.

Mr. A. B. Mukharji appearing for the respondents has a cross-objection and he says that this case

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was not properly considered. We allow the cross-objection and direct that the whole matter be dealt with afresh by the learned Subordinate Judge.

The appellants are entitled to their costs in this Court. The costs incurred in the Court below will abide the result.

KULWANT SAHAY, J.—I agree.

Appeal allowed.
Case remanded.

S. A. K.

APPELLATE CIVIL.

Before Dawson Miller, C.J. and Adami, J.

1927.

Dec., 9.

DIRGOPAL RAI

v.

MAHARAJA BAHADUR KESHO PRASAD SINGH.*

Jurisdiction, territorial, objection as to, not raised in any Court—decree made in the suit, whether can be challenged in a subsequent suit between the same parties—objection, whether can be entertained—Code of Civil Procedure, 1908, *(Act V of* 1908), *sections* 18 *and* 21.

Where in a suit an objection as to the place of suing was not raised in any of the Courts and a decree was passed therein, such a decree is valid and binding, and cannot be called in question in another Court of collateral jurisdiction in a subsequent suit between the same parties on the ground that the Courts in the former suit had no territorial jurisdiction to pass the decree.

Zamindar of Ettiyapuram v. *Chidambaram Chetty* (1), followed.

*Second Appeals nos. 179 and 209 of 1925, from a decision of Maulavi A. Shakur, Officiating Subordinate Judge of Shahabad, dated the 5th February, 1925, reversing a decision of Babu Ram Bilas Sinha, Munsif of Arrah, dated the 11th February, 1924.

(1) (1920) I. L. R. 43 Mad. 675.