

## APPELLATE CIVIL.

Before Das and Allanson, J.J.

AGHOR MANJHI

v.

KSHIRIDA SUNDARI.\*

1927.

July, 20.

*Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), section 139(4), scope of—landlord, suit by, on the footing that defendants have no tenancy rights—civil court, whether can take cognizance.*

Section 139 (4) Chota Nagpur Tenancy Act, 1908, provides :

“ All suits and applications under the Act to eject any tenant of agricultural land or to cancel any lease of agricultural land 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.”

*Held*, that the provisions of section 139(4) refer only to a suit as between landlord and tenant and have no application where the plaintiff landlord institutes a suit on the footing that the defendants have no tenancy rights.

*Bhuplal Sahu v. Bhckha Mahto* (1), distinguished.

Appeal by the defendants.

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

*A. B. Mukharji* and *U. N. Banarji*, for the appellants.

*S. M. Mullick* and *N. N. Sen*, for the respondents.

DAS, J.—This appeal arises out of a suit instituted by the plaintiff Kshiroda Sundari Deby for

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\*Appeal from Appellate Order no. 1288 of 1924, from a decision of Maulavi Najabat Hussain, Subordinate Judge of Manbhum, dated the 19th June, 1924, reversing a decision of Babu Sachindra Nath Ganguli, Munsif of Purulia, dated the 18th December, 1923.

(1) (1927) I. L. R. 6 Pat. 64.

recovery of 10 annas share of a certain tank. It is not disputed that on the 17th November, 1914, she acquired a 10-annas interest of a right which entitled her to possession of the tank if such possession could be taken of the tank by the landlord; but the suit was resisted by the defendants on the ground that they had a raiyati interest in the tank. Both the Courts below have concurred in the conclusion that the defendants have established their title as raiyats under the 6-annas shareholders who have been cited as defendants second party in this litigation. The First Court dismissed the plaintiff's suit on the ground that it was barred by limitation; but the lower appellate Court has taken a different view on the question of limitation and has given the plaintiff a decree substantially as claimed by her.

I will first deal with the question of limitation which appears to be the only question dealt with in the judgment of the lower appellate Court. He says that witness no. 2 on behalf of the plaintiff proves that the plaintiff was in possession within twelve years of the institution of the suit. I may mention that the plaintiff acquired her interest on the 17th November, 1914, and this suit was instituted on the 7th June, 1923. He seems to have admitted that the defendants were in possession of the disputed tank for the last seven or eight years; but according to the reading of that evidence by the learned Subordinate Judge, the witness stated that the plaintiff and before her the superior landlord were in possession of the disputed tank before the defendants got possession of the same. It is quite true that the lower appellate Court has not accepted the story of the plaintiff as to the date when she was dispossessed; but that in my opinion does not destroy the plaintiff's case. The learned Subordinate Judge accepted the evidence of P. W. 2 as trustworthy and in his view that evidence established that the plaintiff was actually in possession of the disputed tank within twelve years of the suit. That being so, the question

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of limitation must be decided in favour of the plaintiff.

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Two points were taken before us which were not taken in the Court below. It was contended that the defendants being tenants and recorded as such in the record-of-rights, the Civil Court had no jurisdiction to entertain the suit and reliance was placed on section 139, clause (4), of the Chota Nagpur Tenancy Act and on a decision of this Court in *Bhuplal Sahu v. Bhekha Mahto* (1). Clause (4) of section 139 provides as follows :

"All suits and applications under this Act to eject any tenant of agricultural land or to cancel any lease of agricultural land 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."

In my opinion the provision refers only to a suit as between a landlord and a tenant. In this case the plaintiff brings the suit on the footing that the defendants have no tenancy rights in the tank. It is quite true that the record-of-rights is in favour of the defendants; but both the Courts below have concurrently found that the record-of-rights in so far as it records the defendants as tenants of the 6-annas shareholders is incorrect. That being so, clause (4) of section 139 has no application to the facts of this case. So far as the decision of this Court in *Bhuplal Sahu v. Bhekha Mahto* (1) is concerned, it seems to me that there is no difficulty whatever in understanding that decision. That was a suit brought by a tenant who claimed to be a tenant on the allegation that he had been dispossessed by the landlord. On his own case the suit was cognizable by the Special Revenue Court and not by the Civil Court and in my opinion this Court had no difficulty in coming to the conclusion that on the plaintiff's own case the suit was not cognizable by the Civil Court.

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(1) (1927) I. L. R. 6 Pat, 64.

The only other point taken is that the defendants having been recorded as raiyats of the 6-annas shareholders, the Civil Court has no jurisdiction to deal with the present suit. The answer is that it is not the case of the plaintiff that the defendants are the tenants of the 6-annas shareholders and the plaintiff's case has been found to have been established on the evidence by both the Courts below.

I would dismiss this appeal with costs.

ALLANSON, J.—I agree.

*Appeal dismissed.*

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## LETTERS PATENT.

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*Before Mullick, A. C. J. and Jwala Prasad, J.*

RAMSARUP RAUT

*v.*

RAMNARAIN TEWARY.\*

*Evidence Act, 1872 (Act I of 1872), section 35—Batwara Khesra, whether public document—Barawarda prepared under Chapter VII, Estates Partition Act, 1876 (Bengal Act VIII of 1876), whether admissible as public document.*

A batwara khesra is not a public document within the meaning of section 35, Evidence Act, 1872, and is not admissible in evidence as such.

*Nand Lal Pathuk v. Mohunt Chanurput Das* (1), followed.

But a batwara barawarda prepared under the provisions of Chapter VII of the Estates Partition Act, 1876, by the

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\*Letters Patent Appeal no. 70 of 1926, from a decision of Kulwant Sahay, J., dated the 14th July, 1926, reversing a decision of Babu Kamla Prasad, Subordinate Judge of Muzaffarpur, dated the 27th November, 1923, reversing a decision of Babu Jadunath Sahay, Munsif of Muzaffarpur, dated the 7th December, 1923.

(1) (1912-13) 17 Cal. W. N. 779.

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