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the tenancy under section 208 being without jurisdiction did not affect the interest of any of the judgment-debtors even though a sale of their interest under section 210(*b*) might have been valid. The property was sold as a whole and either the sale of the whole property was valid or not binding at all. The sale cannot be split up in the manner desired by the appellant.

Upon this view the judgments under appeal are correct and I would dismiss this appeal with costs.

MACPHERSON, J.

AGARWALA, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Macpherson and Agarwala, JJ.

RAJA SHIVA PRASAD SINGH

v.

BHUBAN MAHATO.*

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July, 26.
Aug., 3.

Chota Nagpur Tenancy Act, 1908 (*Beng. Act VI of* 1908), *section* 139 (5), 139*A and* 231—*amending Act VI of* 1920—*suit for declaration of title with consequential relief for possession—jurisdiction of Civil Courts to try such suit, whether barred—rule, whether applicable to cases where institution of suit or even cause of action had been subsequent to amendment of section* 139 (5)—*limitation—section* 231, *applicability of—amendment of section* 139 (5) *and introduction of section* 139A, *effect of—old law, whether restored.*

Held, on a review of *Janardan Acharjee* v. *Hardhan Acharjee*(1), *Asman Singh* v. *Shaikh Obeedooddeen*(2), *Khetra Nath Ghattak* v. *Peru Bauri*(3), *Akhouri Parmeshwari*

* Appeal from Appellate Decree no. 22 of 1931, from a decision of Babu Gajadhar Prasad, Subordinate Judge of Dhanbad, dated the 31st July, 1930, affirming a decision of Babu Naresh Chandra Ray, Munsif of Dhanbad, dated the 22nd November, 1929.

(1) (1867) 9 W. R. (Civil) 513, F. B.
(2) (1875) 23 W. R. (Civil) 460.
(3) (1911) 15 Cal. W. N. 387.

Charan v. *Chaudhury Gursaran Prasad*(1), *Dhup Lal Sahu* v. *Bhekha Mahto*(2), *Chotlal Nandkishore Nath Shah Deo* v. *Tula Singh*(3), *Chaudhury Gursaran Das* v. *Akhouri Parmeshwari Charan*(4), *Gobinda Bauri* v. *Kristo Sardar*(5) and *Deonandan Pande* v. *Anhach Kahar*(6),

(*i*) that section 139 (5), read with section 139A, Chota Nagpur Tenancy Act, 1908, as amended by Act VI of 1920, bars the jurisdiction of the Civil Courts only in summary suits for possession and not in suits for declaration of title with the consequential relief of possession;

(*ii*) that this is so even where the institution of the suit or the cause of action has been, or both have been, subsequent to the amendment of section 139 (5);

(iii) that the provision of section 231 of the Chota Nagpur Tenancy Act, prescribing one year's limitation, has no application to a suit for declaration of the plaintiff's title with consequential relief as to possession;

(*iv*) that, therefore, the suit of a raiyat for declaration of title to and recovery of possession of his holding from a landlord lies in the civil court and does not lie in the revenue court and the period of limitation is the ordinary one and not one year as it is in possessory suit under section 139 (5) of the Chota Nagpur Tenancy Act;

(*v*) that the effect of the new section 139A, read with the amended section 139 (5), was to restore, in cases coming from Manbhum, the law [namely, clause (6) of section 23 of Act X of 1859] as it stood prior to 1909, when the Chota Nagpur Tenancy Act, 1908, was extended to that area.

Appeal by the defendants.

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

S. M. Mullick and *N. N. Rai*, for the appellants.

S. C. Mazumdar, for the respondants.

(1) S. A. 477 of 1923 (Unreported).
(2) (1926) I. L. R. 6 Pat. 64.
(3) (1926) 8 Pat. L. T. 397.
(4) (1926) I. L. R. 6 Pat. 296.
(5) (1926) A. I. R. (Pat.) 64.
(6) (1927) 9 Pat. L. T. 340.

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MACPHERSON, J.—The only question argued in this second appeal is whether the suit was triable in the civil court or was entertainable only by the revenue court under the provisions of section 139 (5) and section 139A of the Chota Nagpur Tenancy Act, 1908, as amended. If the decision be that it is triable by the Deputy Commissioner, it is further urged on behalf of the appellants that it is barred by limitation of one year under section 231 of that Act.

The plaintiffs sued in 1928 for a declaration of title and for recovery of possession of their holding in the Jharia estate in Manbhum on the claim that they were occupancy raiyats dispossessed by the zamindar in Asarh, 1330 (corresponding to July, 1923). The defences of the Receiver of the estate and of the other defendants who according to the defence are cultivating the land on bhag under the Receiver, included a denial of the jurisdiction of the civil court. That and other defences having been negatived, it is contended on appeal on behalf of the defendants that the suit was only triable in the revenue court and was when brought long barred by limitation of one year.

The present law on the point is contained in section 139 (5) and section 139A read together. The former runs:—

"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, namely:—..... (5) all suits and 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."

Section 139A, so far as material, is as follows:—

"Subject to the provisions of Chapter XII, no Court shall entertain any suit concerning any matter in respect of which an application is cognizable by the Deputy Commissioner under section 139,....."

The origin of section 139(5) is to be found in clause 6 of section XXIII of the Recovery of Rents Act, X of 1859, which ran:—

"6. All suits to recover the occupancy or possession of any land, farm, or tenure, from which a raiyat, farmer, or tenant has been

illegally ejected by the person entitled to receive rent for the same :..... .....shall be cognizable by the Collectors of land revenue, and shall be instituted and tried under the provisions of this Act, and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court, or by any other officer, or in any other manner."

Now this provision was considered by a Full Bench of the Calcutta High Court in *Gurudas Rai* v. *Ram Narain Mitter*(1) and it was held that it " refers only to possessory actions against the person entitled to receive the rent and not to suits in which the plaintiff sets out his title and seeks to have his right declared and possession given him in pursuance of that title ", and does not bar the jurisdiction of the civil courts in such suits for wasilat or not. It was there said that the provision " does not take from the civil court the power to try the question of title as between a raiyat, farmer, or tenant, and the person to whom he pays rent. It follows, therefore, that in the action which is brought setting out a title by plaintiff and asking ' under the above facts ' to be declared ' entitled on the strength of his documents to recover possession of the lands ' he will be entitled, if he makes out his case, to a decree that he be put in possession of the lands with mesne profits.....". In that case the plaintiff raiyat had been ten or eleven years out of possession.

In *Janardan Acharjee* v. *Hardhan Acharjee*(2) the referring Judges said :—

" A suit under clause 6, section XXIII of Act X of 1859 has been already declared by a Full Bench decision of this Court to be merely a possessory suit. No question of right or title can be gone into, and the result of the action depends entirely upon the proof or otherwise of the fact of *illegal ejectment* complained of ".

The Full Bench pointed out that the effect of the previous Full Bench decision was that a suit for a

(1) (1867) 7 W. R. (Civil) 186.
(2) (1867) 9 W. R. (Civil) 513, F. B.

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declaration of right might be brought in the ordinary civil court.

In *Asman Singh* v. *Shaikh Obeedooddeen*(1) it was pointed out that the limitation of one year prescribed by section 27 of Act VIII of 1869 applied only to suits described in it and that the suits to recover the occupancy of any land, etc. referred to therein, were suits which were cognizable by the revenue courts under section XXIII, clause 6 of Act X of 1859.

Act X of 1859 was applicable to Manbhum until the introduction in 1909 of Bengal Act VI of 1908. In the rest of the Chota Nagpur Division, Bengal Act I of 1879, the Chota Nagpur Landlord and Tenant Procedure Act, repealed Act X of 1859. Section 37(*6*) of the new enactment reproduced clause 6 of section XXIII of Act X of 1859 except that the last sentence was altered to read :

" and shall not be cognizable in any other court except in the way of appeal as provided in this Act ".

The alteration merely omits superfluous matter and is not one of substance.

Section 139(*5*) of the Chota Nagpur Tenancy Act, VI of 1908, susbtantially reproduced section 37(*6*) of Bengal Act I of 1879 except that the word " applications " was substituted for " suits " and the expression " unlawfully ejected " for " illegally ejected ". The first change followed upon the introduction of section 71, a provision which empowers the Deputy Commissioner within three years of the date of ejectment (section 237) of a tenant from his tenancy or any portion thereof in contravention of section 68 to replace the tenant in possession. Section 68 provides that a tenant shall not be ejected except in execution of a decree, or in execution of an order of the Deputy Commissioner. The change to " unlawfully ejected " from " illegally ejected " may be due to the language of section 71, but in this collocation

(1) (1875) 23 W. R. (Civil) 450.

there does not appear to be any substantial difference between the two expressions.

The question quickly arose whether possessory suits were still cognizable by the revenne courts as they had been under Act X of 1859 and Bengal Act I of 1879. In 1911 it was held in *Khetra Nath Ghattak* v. *Peru Bauri*(1), a case of the district of Manbhum which arose out of a possessory suit under section 9 of the Specific Relief Act, that the suit could be brought in the civil court and indeed that as a result of the change mentioned, the Chota Nagpur Tenancy Act of 1908 did not refer to suits at all, much less bar them from being brought in a civil court. By the amending Act of 1920, as it came into operation, section 139A was added but there was no change in section 139(5). The change therein came into operation on 1st March, 1924.

The effect of section 139A on the jurisdiction of the civil court was considered by this Court in a series of cases in 1926. Adami, J. sitting singly held in *Akhouri Parmeshwari Charan* v. *Chaudhury Gursaran Prasad*(2) that section 139A barred a civil suit by raiyats forcibly dispossessed in 1916 by the landlord for a declaration that they were occupancy raiyats of the land and for recovery of possession, if the suit was instituted after the introduction of section 139A. The same view was taken by Das and Adami, JJ. in *Dhuplal Sahu* v. *Bhekha Mahto*(3). Adami and Bucknill, JJ. in *Chotlal Nandkishore Shah Deo* v. *Tula Singh*(4), however, took a different view in the same circumstances and held that such a suit was not barred as the cause of action had arisen before the introduction of the amendment in 1920 since thereby the plaintiff would be deprived of his cause of action. The first decision of Adami, J. went in Letters Patent Appeal in *Chaudhury Gursaran Das* v. *Akhouri*

(1) (1911) 15 Cal. W. N. 387.
(2) S. A. 477 of 1923 (Unreported).
(3) (1926) I. L. R. 6 Pat. 64.
(4) (1926) 8 Pat. L. T. 397.

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Parmeshwari Charan(1) and was reversed by Miller, C.J. and Jwala Prasad, J. not only on the ground given in *Chotlal Nandkishore* v. *Tula Singh*(2) but also on a consideration of the object and effect of the new section 139A read with the amended section 139(5) which, it was held is " to bar only the cognizance of the civil courts of purely possessory suits under the Specific Relief Act and to restore the law as it stood prior to 1908. These new provisions in the Act do not in any way take away the jurisdiction of the civil courts to entertain suits for possession based upon the determination of title. Only summary suits for possession, and not title suits, with consequential relief for possession, are barred by these provisions ". In *Gobinda Bauri* v. *Kristo Sardar*(3), Kulwant Sahay, J. considered both provisions and held that section 139(5) contemplates only a case where the relationship of landlord and tenant is admitted to exist between the parties and does not contemplate cases where there is a dispute about title. The decision in Letters Patent Appeal was followed by Das and James, JJ. in *Deonandan Pande* v. *Anhach Kahar*(4) in holding that section 139A did not bar a civil suit for declaration of title with consequential possession and they also held that the general law of limitation applied. Thus both the judges who decided *Dhuplal Sahu* v. *Bhekha Mahto*(5) quickly discarded the view there expressed and indeed the decision in the Letters Patent Appeal has been regarded by all Courts as settling the law on the subject.

[As has been indicated above, " the law as it stood prior to 1908" meant in the case cited which came from Palamau, section 37(6) of Bengal Act I of 1879. In the present case from Manbhum the expression should strictly be "the law (namely, clause 6 of section XXIII

(1) (1926) I. L. R. 6 Pat. 296.
(2) (1926) 8 Pat. L. T. 397.
(3) (1926) A. I. R. (Pat.) 64.
(4) (1927) 9 Pat. L. T. 340.
(5) (1926) I. L. R. 6 Pat. 64.

of Act X of 1859) as it stood prior to 1909 " when the Chota Nagpur Tenancy Act, 1908, was extended to Manbhum].

It was urged by Mr. S. M. Mullick on behalf of the appellants that the decided cases *Chaudhury Gurusaran Das* v. *Akhauri Parmeshwari Charan*(1) and *Deonandan Pande* v. *Anhach Kahar*(2) which are against his contention, are distinguishable, in that the cause of action arose prior to the amending Act of 1920 which introduced section 139A, and further the suits were instituted prior to the 1st March, 1924, on which came into operation, by notification in the Gazette of 27th February 1924, the amendment of section 139(5) making that provision apply to " all *suits and* applications " instead of, as formerly, " to all applications ". The present cause of action arose in the interval between the two amendments, so that in this case, precisely as in all previous reported cases, the civil court was at the date when the cause of action accrued, the sole forum for a suit whether for a declaration of title and consequential recovery of possession or for any other relief. The only distinction is that in the present instance the suit was instituted *after* section 139(5) had come into operation. But this consideration is material only to the extent that at the date when the suit was instituted, the ground common to *Chotlal Nandkishore* v. *Tula Singh*(3) and the Letters Patent Appeal(1) that the plaintiff would have no forum at all if he could not bring a civil suit, no longer subsisted. The learned Judges who determined the Letters Patent Appeal(1) interpreted section 139A and the amended section 139(5) together and the view which they expressed of their effect is not only in accordance with the legislative and judicial history set out above but is the only reasonable construction of the law as it now stands. In my judgment their decision furnishes a complete answer to the

(1) (1926) I. L. R. 6 Pat. 296.
(2) (1927) 9 Pat. L. T. 340.
(3) (1926) 8 Pat. L. T. 397.

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contention in appeal on the question of forum and would equally do so even if the cause of action also had been subsequent to the amendment of section 139(*5*). Section 139A only bars the civil court from entertaining a suit regarding a matter cognizable by the Deputy Commissioner by way of application. So far as recovery of possession of a tenancy is concerned, the only application cognizable by the Deputy Commissioner is one for possession after unlawful ejectment, that is to say, an application under section 71 to be summarily replaced in possession after consideration of the one question whether the applicant's ejectment had been by unlawful method. That is the application contemplated by section 139(*5*). A suit under that provision must contemplate the same circumstances, that is to say, a possessory suit in which the sole question for consideration is whether the ejectment has been unlawful. The legislature resolved that all suits and applications on this matter should be cognizable by the revenue court only. But by neither provision did it bar the civil courts from entertaining a suit for declaration of title to and consequent recovery of possession of a tenancy nor interfere with the period of limitation prescribed for such a suit.

A comparison of section 139(*5*) with section 139(*6*) is also instructive. The latter definitely assigns to the Deputy Commissioner all suits by or against a village-headman for a *declaration of title in*, possession of, ejectment from, or recovery of, his office or land comprised in his village-headman's tenancy. It would have been unnecessary to refer to a declaration of title in his office or the land of his tenancy if in sub-section (*5*) "occupancy or possession" covered the same ground as "declaration of title in, possession of &c." covers in sub-section (*6*).

On the question of limitation it is manifest that section 237 could not apply. Section 231 applies the same limitation of one year to suits under the Act as section XXX of Act X of 1859 and section 42 of

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Bengal Act I of 1879 did in almost identical language and it is obvious that the same class of suit was intended, to wit, a possessory suit for the raiyat after illegal or unlawful ejectment by the landlord, and that the provision has no application to a suit for declaration of the plaintiff's title, with consequential relief as to possession.

Upon this view the suit of a raiyat for declaration of title to and recovery of possession of his holding from a landlord lies in the civil court and does not lie in the revenue court and the period of limitation is the ordinary one and not one year as it is in a possessory suit under section 139(5) of the Chota Nagpur Tenancy Act.

The appeal is without merits and is accordingly dismissed with costs.

AGARWALA, J.—I agree.

Appeal dismissed.

PRIVY COUNCIL.

J. C.* 1933.

July, 27.

RAS BEHARI LAL

v.

KING-EMPEROR.

On Appeal from the High Court at Patna.

Privy Council Practice—Criminal Matter—Trial by Jury —Juror ignorant of English.

The eight appellants were tried for murder and rioting by a Sessions Judge sitting with a jury of seven. The jury having found them guilty by a majority of six to one the Sessions Judge convicted and sentenced them, some to death. The convictions and sentences were confirmed by the High Court. Upon an application for special leave to appeal an inquiry was ordered to be made by the High Court as to the truth of an allegation made on appeal to the High Court, and by the petition, that one of the jurors did not understand English. The High Court reported that the juror in question

* *Present*: Lord Atkin, Lord Thankerton, and Sir George Lowndes.