

Bench decision of the Madras High Court, the view taken by the learned Subordinate Judge is wrong. His order is set aside. He is directed to substitute the names of the appellants, and then proceed to execute the decree according to law.

The appeal is allowed with costs.

LUBY, J.—I agree.

Appeal allowed.

1934.

F. A.
McNAUGHT
v.
MUSAMMAT
SARASWATI
THAKURAIN.

KHAJA
MOHAMAD
NOOR, J.

LETTERS PATENT.

Before Courtney Terrell, C.J. and Agarwala, J.

SRIMATI PARBATI KUMARI

v.

DOMAN MANJHI.*

1934.

July 5, 7,
31.

Chota Nagpur Tenancy Act, 1908 (Ben. Act VI of 1908), section 64(3)—tenant commenced to convert land into Korkar—Deputy Commissioner, whether has exclusive jurisdiction in the matter of ejectionment.

Section 64(3), Chota Nagpur Tenancy Act, 1908, provides :

“ Where the consent of the landlord is required by this section for the conversion of land into korkar, such consent shall be deemed to have been given if, within two years from the date on which the cultivator commenced such conversion, the landlord has not made an application to the Deputy Commissioner for the ejectionment of the cultivator (and no cultivator who is a tenant or resident of a village, shall be ejected from land of that village, which he has commenced to convert into korkar, otherwise than upon such an application) ”.

Held, that the concluding sentence of the section has the effect of giving to the Deputy Commissioner exclusive jurisdiction in the matter of ejecting a tenant or a resident of the village from land which he has begun to convert into korkar.

The only way in which that jurisdiction can be ousted in favour of the civil court is by showing that the defendant is neither a tenant nor a resident of the village.

* Letters Patent Appeals nos. 180—188 of 1933 from a decision of the Hon'ble Mr. Justice Khaja Mohamad Noor, dated the 14th November, 1933.

1934.

SHEMATI
PARBATI
KUMARI
v.DOMAN
MANJHI.

Gobinda Bauri v. Kristo Sardar⁽¹⁾, *Aghor Manjhi v. Kshirodu Sundari*⁽²⁾ and *Chaudhry Gursaran Das v. Akhauri Parmeshwari Charan*⁽³⁾ distinguished.

Appeals by the plaintiff.

The facts of the case material to this report are set out in the judgment of Courtney Terrell, C. J.

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

K. K. Bannerjee, for the respondents.

COURTNEY TERRELL, C. J.—These appeals are from a single Judge of this Court (Noor, J.) affirming the appellate decision of the Subordinate Judge of Hazaribagh by which he reversed the decree of the Munsif and dismissed the suits on the ground that the Civil Court had no jurisdiction.

The plaintiff as mokarraridar sued in each case to eject the defendants from certain gairmazrua khas land after declaration of the plaintiff's title. The defendants alleged that they were protected under the Chota Nagpur Tenancy Act as they had brought the land under cultivation as "korkar" and further contended that the Civil Court had no jurisdiction in the matter.

The suits related to four plots of land, Nos. 46, 20, 41 and 43. As to plots 46 and 43, it has been found as a fact by the Munsif that the conversion into korkar was complete as to portions thereof and the defendants having acquired an occupancy right therein under section 67 of the Act the suits must be dismissed as to these portions, but he gave a decree as to the rest. The Subordinate Judge dismissed the suits entirely holding as a fact that the conversion into korkar of the remaining land though not completed had been begun, and that in all the suits the defendants

(1) (1925) 90 Ind. Cas. 489.

(2) (1927) I. L. R. 7 Pat. 82.

(3) (1926) I. L. R. 6 Pat. 296.

were either raiyats or residents of the village. Section 64 (3) upon which his decision was based runs as follows :

" Where the consent of the landlord is required by this section for the conversion of land into korkar, such consent shall be deemed to have been given if, within two years from the date on which the cultivator commenced such conversion, the landlord has not made an application to the Deputy Commissioner for the ejection of the cultivator (and no cultivator who is a tenant or resident of a village, shall be ejected from land of that village, which he has commenced to convert into korkar, otherwise than upon such an application) "

In my opinion the effect of this section is that within two years of the commencement of the conversion the landlord may apply to the Deputy Commissioner to eject the cultivator and may in such application prove that the work was begun without his consent. If he fails to take this step then his consent will be deemed to have been given and the concluding sentence added by amendment has the effect of giving to the Deputy Commissioner exclusive jurisdiction in the matter of ejecting a tenant or a resident of the village from land which he has begun to convert into korkar. Circumstances may occur in which a tenant or resident begins conversion and then abandons the attempt, but the question of whether any such attempt has or has not been abandoned is a matter of fact. In the present cases no such abandonment has been found, a commencement of conversion has taken place and in such case the application for ejection can only be made in the Court of the Deputy Commissioner.

The plaintiff argues that the defendants have denied the landlord's title. This is not true as I shall presently show. The Act specifically gives to the Deputy Commissioner exclusive jurisdiction and the only way in which that jurisdiction can be ousted in favour of the Civil Court is by showing that the defendant is neither a tenant nor a resident of the village.

1934.

SRIMATI
PARBATI
KUMARI

v.

DOMAN
MANJHI.COURTNEY
TERRELL,
C. J.

1934.

SRI MATI
PARBATI
KUMARI
v.
DOMAN
MANJHI.

COURTNEY
TERRELL,
C. J.

Two cases were relied on by the appellants to support their contention that a denial of the plaintiff's title by the defendants will attract the jurisdiction of the Civil Court. They are *Gobinda Bauri v. Kristo Sardar*⁽¹⁾ and *Aghor Manjhi v. Kshiroda Sundari*⁽²⁾. In both of these the defendant relied on section 139 (4) of the Act, and it was held that that section referred only to suits between a landlord and his tenant and ceased to apply when the relationship of landlord and tenant was in issue and that in the latter case the Civil Court had jurisdiction. In those cases the court had no concern with section 64 or of any question of korkar rights and they are not relevant.

The case of *Chaudhry Gursaran Das v. Akhouri Parmeshwari Charan*⁽³⁾ is also not relevant. The decision turned on section 139A and had no reference to korkar rights or to section 64. Here also the plaintiff's title was expressly denied. In these cases the defendants did not deny that they were tenants or residents of the village: had they done so the case might have been otherwise decided. They merely contended that as a mokarraridar under the superior landlord of the village the plaintiff had no right to sue. It could hardly be contended that the mokarraridar was not in as good a position as the superior landlord and so this plea failed. In my opinion Mr. Justice Noor was right in holding that section 64 (3) is conclusive and I would dismiss these appeals with costs.

AGARWALA, J.—I agree.

Appeals dismissed.

(1) (1925) 90 Ind. Cas. 489.

(2) (1927) I. L. R. 7 Pat. 82.

(3) (1926) I. L. R. 6 Pat. 296.