however, been found as a fact by the lower appellate Court that the defendants had never refused to do the legitimate work of the duties of the gorait and it has also been found that the plaintiffs never gave any notice to the defendants to quit the land. In these circumstances I do not think it is necessary that the appeal should be remanded to the lower appellate Court merely for the purpose of determining the abstract question as to whether the plaintiffs are entitled to the declaration claimed in paragraph 11 of the plaint.

The appeal, as I have said, fails on certain preliminary grounds and is, therefore, dismissed with costs.

CHATTERJI, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Wort and James, JJ.

PANDEA MUNDA

v.

LADURA MUNDA.*

Chota Nagpur Tenancy Act, 1908 (Beng. Act VI of 1908), section 74A, scope of—headmanship not held in conjunction with land, whether covered by the section.

Section 74A, Chota Nagpur Tenancy Act, 1908, lays down:

> "(a) Where a tenancy which in accordance with custom is held by a village-headman, has for any reason been vacated, any three or more tenants holding land within the said tenancy, or the landlord, may apply to the Deputy Commissioner to determine the person who in accordance with custom should be village-headman entitled to hold the tenancy.....".

Held, that the sub-section contemplates not only those cases in which the headmanship is held in conjunction with land but also those in which the land is not so held.

Appeal by the defendant.

*Appeal from Appellate Decree no. 1487 of 1926, from a decision of Babu Pramatha Nath Bhattacharji, Subordinate Judge of Ranchi, dated the 7th July, 1926, confirming a decision of Babu Lakshmi Narayan Patnaik, Munsif of Khunti, dated the 23rd April, 1925.

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WORT, J.

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

S. N. Mazumdar, for the appellant.

A. K. Roy and *B. B. Ghosh*, for the respondent.

WORT, J.—This is an appeal against a decision of the Subordinate Judge of Ranchi affirming a decision of the Munsif in a suit in which the plaintiff prayed for a declaration that the appointment made by the Khas Mahal Deputy Collector and confirmed by the Commissioner on the 1st of August, 1922, was a valid and proper one, and that the subsequent recommendation and approval of the Deputy Commissioner was invalid and without jurisdiction, also for a declaration that the plaintiff was entitled to be restored to his former position of the Munda of the village and other reliefs. The suit succeeded in both the courts below, the matter in controversy, as indicated, being a claim to the village headmanship in the village Garamara.

It appears that after the death of the village-headman an application was made to the Khas Mahal Deputy Collector which was confirmed by the Deputy Commissioner on the 16th November, 1921, by which the plaintiff was appointed the village-headman. A subsequent application was made to the Deputy Commissioner and he declined to interfere with the order which was already made. Thereupon certain villagers instituted a case on the 14th of October, 1922, before the Subdivisional Officer, Khunti, to set aside the plaintiff's appointment and the order made by the Subdivisional Officer was confirmed by the Deputy Commissioner on the 14th December, 1923, by which the defendant, the appellant before us, was appointed as the Munda of the village. The application which was made to the Subdivisional Officer is stated to have been made under section 74A of the Chota Nagpur Tenancy Act, and, in any event, from the ordersheet of the Deputy Commissioner, that

appears to be the case. The suit was for a declaration that that order was made without jurisdiction, as I have already said, and for consequential relief. The Subordinate Judge decided on appeal that the order of the Deputy Commissioner was made without jurisdiction for the reason that the application which was made under section 74A was one which in the circumstances was not maintainable.

Now, it appears that in some cases there with the office of the village-headman there is held a tenancy in some plot or plots of land: in other cases the office is held without any land in connection therewith. The case which we have before us is one of the latter. The Subordinate Judge has held that that being the case no application is maintainable under section 74A of the Chota Nagpur Tenancy Act for the reason that, upon a proper construction of the section, applications therein contemplated were referable only to those headmanships which were held in conjunction with land, that is to say, that some form of tenancy of a plot or plots of land subsisted with the office of the village headman. The first point, therefore, for our determination is whether the construction placed upon the section by the Subordinate Judge was the correct one. I need not set out the section in extenso; but it is sufficient to say that both sub-section (*1*) and sub-section (*2*) of section 74A do create a very considerable difficulty in connection with the point which is raised in this appeal. I refer to the first clause of section 74A which reads:

"Where a tenancy which in accordance with custom is held by village headman, has for any reason been vacated".

and then come to sub-section (*2*)—

"such application may be made notwithstanding that a person is in possession of the land of the tenancy, or part thereof, under the authority or with the consent of the landlord."

In both these sub-sections it is argued that what is clearly contemplated is the actual possession of a plot

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or plots of lands in connection with the office of headman. The definition of tenants is referred to in sub-section (*XXVI*) of section 3 of the Act which runs as follows:

"'Tenant' means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person."

"Tenancy" is not defined in the Act; but it is argued that tenancy can only be that right which a tenant possesses and as a tenant is a person who holds land, consequently, the word tenancy must refer to land. There is difficulty, however, in accepting that construction. Sub-section (*1*) of section 74A proceeds to say:

"Where a tenancy which in accordance with custom is held by a village-headman, has for any reason been vacated, any three or more tenants holding land within the said tenancy or the landlord may apply to the Deputy Commissioner to determine the person who in accordance with custom should be village-headman entitled to hold the tenancy."

If the contention urged by the respondent is correct, being the construction placed upon the section by the Subordinate Judge, then what is contemplated by the words to which I have referred is that the tenants mentioned therein must be the tenants, not any three tenants of the village over which the headman rules, but three tenants of the land which he holds in connection with the headmanship. It seems that that would be straining the language of the section and, at any rate, putting a construction upon it which it is difficult to hold was intended by the legislature. The real difficulty is, as I have already pointed out, that which arises from the first clause of the sub-section

"where a tenancy which in accordance with custom is held by a village-headman."

The expression used by the legislature is not particularly happy, if what was intended was that the section was applicable to both classes of village-headman having regard to the fact that the word tenancy has a technical meaning and that, no definition being given in the Act, and by the ordinary canon of construction, it must be deemed to have that technical

meaning. But in my judgment, after a careful perusal of the section and particularly of sub-section (*3*), what was intended by section 74A was to deal with all applications whether the village-headmanship was held in conjunction or not in conjunction with land. It seems to me that sub-section (*3*) of section 74A throws a considerable light upon the meaning of the section. That sub-section reads :

" On receiving such applications the Deputy Commissioner shall, after giving notice in the prescribed manner to the landlord, the person if any, referred to in sub-section (*2*), the heirs of the last village-headman, the tenants and such other persons, if any, as he considers should be a party to the proceeding make such enquiries as appear necessary, and determine the person who in accordance with custom should be the village-headman."

The last few words seem to me to explain the one expression in the first sub-section which stands in the way of the view which is advanced on behalf of the appellant. That view, as I have already stated, is that that sub-section refers not only to those cases in which the headmanship is held in conjunction with land but also to those in which the land is not so held. Now, on one construction, and that which is advanced on behalf of the respondent, it would appear that the word " tenancy " in sub-section (*1*) of section 74A is qualified by the words following

" which in accordance with custom is held by a village-headman."

It would, therefore, appear that two distinct matters are referred to, first, the tenancy and then the "village-headman " as the person who in accordance with the custom was the holder of " the tenancy "; but it is clear that by the words used in sub-section (*3*) what it was intended to express was that the village-headmanship is held in accordance with the custom of the village. When once that aspect of the case is taken, it seems to me that it also becomes clear that the legislature did not intend to limit the section to one class of case. If that be so, and in my judgment it is, the decision of the learned Subordinate Judge in so far as it depends upon the question of the construction of section 74A is wrong and it cannot be said that the Deputy Commissioner in making his order dated the 14th December, 1923, had no jurisdiction.

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In so far as any question of law may arise in this case, it seems to me that the case is disposed of. But it is argued that the learned Subordinate Judge had no jurisdiction to go into the merits of the case. If the view that is placed before us by the appellant of section 74A (*1*) is right, then it is perfectly clear that the Munsif in the first place had jurisdiction to entertain the suit under section 74A (*5*). It is clear, and there is no dispute about this matter, that this suit was instituted within one year as laid down by the section. On the other hand, if the view of the respondent of the section is the correct view, then it seems to me that any right which the plaintiff had in the suit is limited by the provisions of section 258. That section provides that no suit should be entertained save as expressly provided in the Act. The proviso to that section is that such a suit may be made on the ground of fraud or want of jurisdiction. It is contended that if section 74A is upheld, then the suit which is before us becomes a suit within the exception of section 258 and, therefore, the court's jurisdiction is limited to the declaration that the last order made by the Deputy Commissioner was without jurisdiction. It becomes unnecessary, however, to decide that somewhat difficult point by reason of my decision on the main question, that is to say, my decision on the true construction of section 74A. Arising from that decision, the plaintiff was entitled to prosecute his suit under sub-section (*5*) of section 74A and, therefore, the Subordinate Judge had jurisdiction to enter into an investigation of the merits of the case.

It is argued on behalf of the appellant that the decision on the merits is wrong in law. The learned Subordinate Judge in discussing this question has discussed three questions which appear to have been advanced before him. The first question was whether or not the defendant had *sasan* in the village in question. It is argued that in coming to the conclusion at which he arrived in this connection, he has indirectly come to a conclusion which is contrary to

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the record-of-rights. It is said that by coming to the conclusion that the defendant had *sasan* in the village he indirectly decided that they were not Khuntkattidars of the village. In my judgment that argument has no foundation, and the argument must fail. The next point which the learned Subordinate Judge dealt with was the contention by the defendant, the appellant before him, that the Munda of the village was appointed from the clan or Koli of the defendant. He has come to the conclusion on the facts contrary to the defendant's contention and, it seems to me, upon materials which were sufficient. The last and the final point which he has discussed in this case was whether or not the majority of the villagers were in favour of the defendant's candidature. On that point, which is obviously a question of fact, the learned Subordinate Judge also came to a conclusion against the defendant. In my judgment, so far as the merits of the case are concerned, this appeal fails. It succeeds to this extent that the learned Subordinate Judge was wrong in law in deciding that the Deputy Commissioner had no jurisdiction, but generally the learned Subordinate Judge having decided in favour of the plaintiffs on the merits, the appeal must fail and is dismissed with costs.

JAMES, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Jwala Prasad and Rowland, JJ.

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May, 23.

BANK OF BIHAR LIMITED

v.

SRI THAKUR RAMCHANDERJI MAHARAJ.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *Order XXXIII, rule 2—pauper, application to sue as, whether*

*Appeal from Appellate Order no. 186 of 1928, from an order of Babu Amar Nath Chaterji, District Judge of Gaya, dated the 27th of August, 1928, reversing an order of Maulavi Syed Mohammad Ibrahim, Munsif of Gaya, dated the 16th August, 1927.