

1930.

SONARAM
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EMPEROR.

SCROOPE, J.

more to the shoes having been hid on by chance and had it not been that the mind of the Court was influenced by the statement of Sonaram to the effect that Laktoo had helped him in disposing of the dead body, which is not evidence against Laktoo, I do not think there would have been a conviction on the evidence.

In my opinion the legal evidence is not sufficient to justify the conviction of Laktoo and I would, therefore, acquit him.

FAZL ALI, J.—I concur in the order proposed.

Sentence confirmed.

Appeal of appellant no. 2 allowed.

REVISIONAL CIVIL.

Before James, J.

SHEIKH MOHAMMAD IBRAHIM

v.

SHEIKH ABAD.*

1930.

February,
13, 14, 19.

Landlord and tenant—suit for produce-rent—onus of proving rate of outturn, on whom lies.

In a suit for arrears of produce-rent the onus of proving the rate of outturn lies on the plaintiff.

Hafiz Zeyauddin v. Jagdeo Singh (1), not followed.

Application in revision by the plaintiff.

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

P. P. Varma, for the petitioner.

K. N. Moitra, for the opposite party.

* Civil Revision no. 555 of 1929, from an order of J. Chatterji, Esq., District Judge of Saran, dated the 16th of July, 1929, dismissing an appeal from the order of Babu Atal Behari Saran, Munsif of Siwan, dated the 31st of May, 1929.

(1) (1928) I. L. R. 8. Pat. 418.

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 SHEIKH
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 ABAD.

JAMES, J.—This application arises out of a suit for rent in which after it had been dismissed by the Munsif of Siwan, an appeal to the District Judge of Saran was rejected on the ground that it was barred by the provisions of section 153(b) of the Bengal Tenancy Act. I am asked to revise the order of the District Judge, on the ground that an appeal lay from the decree of the Munsif because he had decided a question relating to an interest in land between parties having conflicting claims thereto, and the question of the amount of rent annually payable by the tenant.

A defence taken by the defendant was that not he but the plaintiff's co-sharers were in possession of the land in respect of which rent was claimed. Whether the decision of this question was the decision of a question relating to an interest in land as between parties having conflicting claims thereto is an arguable point; but it is not necessary to decide this point, because the learned Munsif did decide the question of the amount of rent annually payable by the tenant, so that an appeal from his decision did lie to the District Judge.

I am further asked to revise the order of the learned Munsif on the ground that he committed an error of law when he said that in this suit, which was for arrears of produce rent, the onus of proving the rate of outturn lay on the plaintiff. In support of his argument Mr. P. P. Varma relies upon the decision in *Hafiz Zeyauddin v. Jagdeo Singh*⁽¹⁾ in which, in the course of pronouncing judgment in accordance with the consent of parties, it was remarked that in a suit for produce rent the onus lies on the tenant to show what the produce was during the years in suit. In certain circumstances, as where rent is payable on the batai system and the tenant has surreptitiously removed the crop, if the provisions of section 71(4) of the Bengal Tenancy Act cannot be applied and the question of the actual value of the

(1) (1928) I. L. R. 8 Pat. 418.

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crop reaped is in issue between the parties, little evidence may be required to shift the onus on to the defendant, since he knows what he reaped and the plaintiff-landlord does not. But even in such a case there must be some evidence before the burden is shifted; and that evidence must be *prima facie* true. In a suit for arrears of produce rent, as in any other rent suit, the plaintiff's case must be proved or admitted before he can obtain a decree; and the obiter dictum in *Hafiz Zeyauddin v. Jagdeo Singh*⁽¹⁾ is far too sweeping. Indeed, it was never meant to imply that in a contested suit for arrears of produce rent the plaintiff might ask for a decree for the full amount of his claim without adducing truthful evidence in support of it, although on the face of it the obiter dictum does bear that construction. The view of the learned Munsif that the onus lay on the plaintiff to prove the rate of outturn is correct. I make these remarks because I was myself a party to the decision cited; but this application has to be allowed on other grounds; and it will be for the learned District Judge to determine whether the finding of fact of the learned Munsif is to be affirmed or not. The appeal is remanded to the District Judge of Saran for disposal according to law. I make no order for costs.

Rule made absolute.

APPELLATE CIVIL.

Before Jwala Prasad and Rowland, JJ.

BEPAT SINGH

v.

SHAM LAL SAO.*

1929

June, 7.

*Contract Act, 1872 (Act IX of 1872), sections 69 and 70—
contribution; suit for—decree for rent passed against two*

* Appeal from Appellate Decree no. 1080 of 1927, from a decision of Babu Kamala Prasad, Subordinate Judge of Patna, dated the 25th April, 1927, reversing a decision of Maulavi Abdul Aziz, Munsif of Patna, dated the 26th May, 1926.

(1) (1928) I. L. R. 8 Pat. 418.