## APPELLATE CIVIL.

*Before Fazl Ali and Luby, JJ.*

GOBARDHAN SAHU

*v.*

LALMOHAN KHARWAR.*

1935.

*October, 2.*

*Chota Nagpur Tenancy Act, 1908 (Act VI of 1908), sections 87 and 258—whether section 258 bars a civil suit after the decision in a suit under section 87—scope of a suit under section 87—suit for declaration of title and possession after the decision in a suit under section 87—jurisdiction of civil court.*

The rent claimed lands were recorded in the record-of-rights as raiyati of the defendants who brought a suit under section 87 of the Act for being recorded as tenure-holders and they succeeded. The appellant filed a suit for declaration of title and confirmation of possession in 1921 which was compromised.

The appellant thereafter filed the present suit for rent and some of the defendants asserted that they were tenure-holders and not tenants. The learned Judicial Commissioner held that the suit of 1921 was without jurisdiction and that the relationship of landlord and tenant had not been established.

*Held*, (*i*) that the record-of-rights does not by itself create or extinguish title, but is only a piece of evidence; and the provisions made in Chapter XII are intended to make it as perfect and immune from attack as possible;

(*ii*) there is nothing in section 258 of the Act to bar a suit for declaration of title and possession and other reliefs which the Revenue Officer could not grant though it may have to be shown in that suit that the entry in the record-of-rights is not correct and the consequence of such a suit may be to some extent to vary, modify, or even indirectly set aside a

* Appeal from Appellate Decree no. 883 of 1933, from a decision of J. A. Saunders, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 23rd March, 1933, reversing a decision of Maulavi Amanat Hussain, Rent Suit Deputy Collector at Daltanganj, dated the 29th June, 1931.

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decision or decree of a Deputy Commissioner. There is a clear line of distinction between a suit to vary, set aside or modify a decision under section 87 of the Act and a case where the suit had been instituted for a relief which the Revenue Officer could not grant. There is no provision in the Act to the effect that the presumption of correctness which attaches to the record-of-rights becomes irrebuttable after a decision under section 87.

*Maharaja Protap Udainath Sahi Deo* v. *Ganesh Narain Singh*(1) and *Lal Govind Nath Sahi Deo* v. *Lal Mahesar Nath Sahi*(2), relied on.

Appeal by the plaintiffs.

The facts of the case material to this report are stated in the judgment of the Court.

*Raghosaran Lal*, for the appellant.

*N. K. Prasad II*, for the respondent.

FAZL ALI AND LUBY, JJ.—Gobardhan Sahu appeals against the judgment, dated March 23, 1933, of the Judicial Commissioner of Chota Nagpur in rent appeal no. 48 of 1931, whereby the learned Judicial Commissioner dismissed with costs the rent suit which he had brought against Lalmohan Kharwar (or Bhogta) and others, defendants, now respondents. The appeal is valued at Rs. 26 and odd.

The appellant is a co-sharer landlord of village Meral and collects his own share of the rent separately. The other co-sharer landlords are his relatives Kewal Sahu, Ramdeo Sahu and others. In the rent suit with which we are now concerned he sued 40 defendants including the present respondents who are 7 in number, for rent of the years 1335 to 1337 F. S. Eleven of the defendants paid up the rent claimed, and the plaintiff filed a petition of satisfaction as regards his claims against them. Only 7 of the defendants, i.e. the present respondents, contested the suit claiming that they were not tenants but tenure-holders.

(1) (1921) A. I. R. (Pat.) 218.
(2) (1928) I. L. R. 7 Pat. 388.

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The lands in question were entered as the respondents' raiyati holdings in the Record-of-Rights which was finally published in 1918. After that the respondents brought a suit under section 87 of the Chota Nagpur Tenancy Act to have themselves recorded not as tenants but as tenure-holders. The suit was dismissed by the trying Court, but was decreed on appeal by the Judicial Commissioner in March, 1920. The defendant appealed to this Court, and the resulting decision is reported in *Foujdar Sahu* v. *Nema Bhogta*(1). It was held therein by Das and Ross, JJ., that no appeal lay to this Court because—"A decision under section 87 of the Chota Nagpur Tenancy Act is not a decree; it is a decision, and there is no appeal to the High Court under the Civil Procedure Code from a decision." The judgment was delivered by Das, J. who observed further that—"It was argued by Mr. Ramlal Dutt that the learned Judicial Commissioner had no business to decide a question of title. But I do not think that he has in fact decided any question of title. No doubt in deciding whether the entry in the record-of-rights is correct or incorrect he had incidentally to discuss the question of title, but his decision on the question of title is only incidental; it is nothing more than that. His decision really is a decision on the question of possession." In December, 1921, a civil suit was filed by Kewal Sahu, Ramdeo Sahu and others, against Lalmohan Kharwar (or Bhogta) and others, for a declaration of their title to the land in question and for confirmation of their possession. In the plaint of Kewal Sahu, etc., the previous history of the dispute is told. The Sahus claimed that their ancestors had purchased a 12 annas *mokarri* interest from the landlord as long ago as 1821. The Bhogtas were originally the 16 annas *mokarridars* but had sold 12 annas to the landlord before 1821. The remaining 4 annas share of the Bhogtas was subsequently acquired by the Sahus who got delivery of possession in 1848. A suit was

(1) (1921) 6 Pat. L. J. 634.

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brought by Jhari Bhogta to recover possession of the 12 annas share which had been sold to the landlord, but the suit was dismissed. In 1884 the Sahus acquired the landlord's interest in the property. In 1908 there was some litigation between two branches of the Sahu family. After that litigation had terminated, the branch to which Gobardhan Sahu belongs was left in possession of a 10 annas share which they have continued to hold to this day. The original mokarridars (the Bhogtas) had left the village after disposing of their share and resided for many years in Surguja State; but when the settlement operation commenced in Palamau district they came back and laid claim to a 4 annas mokarri share. Their claim was dismissed by the Settlement Officers, who found that Lalmohan and his father were not mokarridars but were in possession of a small quantity of land as tenants on payment of rent to the Sahus. The Bhogtas then brought the suit under section 87 of the Chota Nagpur Tenancy Act, which was dismissed by the trying Court but was decreed by the Judicial Commissioner on appeal in March, 1920.

The civil suit brought by the Sahus in 1921 ended in a compromise in 1923, by which the Bhogtas admitted the Sahu's claim and the suit was decreed in accordance with the compromise.

The rent suit with which we are at present concerned was decreed against the contesting defendants, i.e., the present respondents, by a rent-suit Deputy Collector on June 29, 1931. But on appeal by the defendants the learned Judicial Commissioner has dismissed the suit with cost of both Courts, on the ground that Gobardhan Sahu had failed to establish a relationship of landlord and tenant between himself and the Bhogtas. He held that the suit filed by the Sahus in 1921 was entertained without jurisdiction, being barred by section 258 of the Chota Nagpur Tenancy Act, and that the decree passed in that suit on compromise was therefore invalid. In his opinion

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the suit in which the compromise decree was passed was a suit to vary, modify or set aside the decision and decree of the Judicial Commissioner under section 87 and was therefore barred by section 258 of the Act.

The question to be determined in this appeal is whether the view taken by the learned Judicial Commissioner is correct. Section 258 of the Chota Nagpur Tenancy Act provides that no suit shall be entertained in any court to vary, modify or set aside either directly or indirectly any [Decision] order or decree of any Deputy Commissioner or any Revenue Officer in any suit under section 87 (and certain other sections of the Act) except on the ground of fraud or want of jurisdiction.

Section 87 occurs in Chapter XII of the Act—a chapter relating to the record of-rights and settlement of rents—and provides that

> in proceedings under this chapter a suit may be instituted.............. for the decision of any dispute regarding any entry which a Revenue Officer has made or any omission which he has made from the record.

This section further specifies certain classes or disputes which might be the subject-matter of a suit under the section. The words quoted above are important and must be noted because they show that the scope of the suit under section 87 is a limited one. In the first place such a suit is a suit to be instituted before the Revenue Officer and when instituted it becomes part of the proceedings under Chapter XII and secondly it must be a suit for the decision of a dispute regarding an entry made in or omission from the record. A brief reference to some of the main provisions of Chapter XII will further elucidate the purpose for which section 87 was enacted. As we have already stated Chapter XII relates to "the record-of-rights and settlement of rent" and section 81, therefore, appropriately enumerates some of the chief particulars that are to be recorded in the record-of-rights. The sections which follow section 81 show the anxiety of the framers of the Act to ensure that

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the record-of-rights was correctly prepared and to give it a certain degree of finality. Sections 86 to 90 give a chance to the party aggrieved to question the correctness of the entries in the record-of-rights and enable the Revenue Officer to frame issues relating to disputes between the parties and decide them, to revise certain orders and decisions and to correct any entry in the record-of-rights which may have been made under a bona fide mistake. Sections 91, 92 and 93 provide that no suit shall be instituted within certain periods specified in these sections with regard to matters which are the subject of the record-of-rights. It is, however, to be noted that these sections merely prohibit the institution of suits within a certain period and not absolutely, and there is nothing either in Chapter XII or in any of the other chapters of the Chota Nagpur Tenancy Act to justify the view that a party can be debarred from instituting a suit in the Civil Court to establish his title to and recover possession of his property merely because of there having been a proceeding under section 87 with regard to such property. There are no doubt provisions in the Act which are intended to give finality to the proceedings instituted under Chapter XII and to make the record-of-rights strong evidence of facts stated therein, but these provisions simply mean that no proceedings other than those mentioned in Chapter XII can be entertained for the cancellation of the record-of-rights or to re-open those disputes which have been settled between the parties during the preparation of the record-of-rights with the primary object of maintaining a correct record-of-rights. As has been frequently pointed out the record-of-rights does not by itself create or extinguish title, but it is only a piece of evidence; and the provisions made in Chapter XII are intended to make it as perfect and immune from attack as possible. The language used in section 87 itself will show that a Revenue Officer cannot under that section entertain a suit for recovery of possession and it seems to us therefore that the Legislature could not have intended that the decision

given in a suit under section 87 should bar a suit instituted to recover possession or claim some other reliefs which the Revenue Officer could not grant.

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Now, if section 258 is construed in the light of the foregoing discussion, it follows as a matter of inference that a suit for possession will not be barred even though incidentally it may have to be shown in that suit that the entry in the record-of-rights is not correct and the consequence of such a suit may be to some extent to vary, modify or even indirectly set aside a decision, order or decree of a Deputy Commissioner. We think that there is a clear line of distinction between those cases where the suit is instituted for the purpose of varying, modifying or setting aside a decision under section 87 and those where the suit has been instituted for a relief which could not be granted under that section but in granting which the Court may have to find that the entry in the record-of-rights is not correct even though it may be based on a decision under section 87. There is no provision in the Act to the effect that the presumption of correctness which attaches to an entry in the record-of-rights becomes irrebuttable after a decision under section 87. If therefore the entry can be held to be incorrect, the decision under section 87 upon which the final entry may have been based may also be shown to be wrong. The mere fact therefore that some of the issues in a suit may be the same as the issues before the Revenue Officer in a suit under section 87 will not be enough to bar the former suit if it is clear that the scope of the suit is different from the scope of the suit before the Revenue Officer and the suit has been instituted for obtaining such reliefs as the Revenue Officer was not competent to grant. Of course sometimes to overcome the bar of section 258 a suit which is essentially a suit for setting aside an entry in the record-of rights may be instituted in the garb of a title suit, but the Courts will always look to the essence and not to the form of the suit.

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We are glad to find that the view which we have expressed here is supported by at least two previous decisions of this Court to which we ought briefly to refer. In *Maharaja Protap Udainath Sahi Deo* v. *Ganesh Narain Sahi*(1) Dawson Miller, C.J., dealing with the scope of section 258 observed:—"Section 258 of that Act provides that no suit shall be entertained in any Court to vary, modify or set aside either directly or indirectly any order or decree of any Deputy Commissioner or Revenue Officer in any suit or proceeding under, inter alia, section 87. The present suit is not brought for the purpose of setting aside Mr. Kingsford's decree and although the section no doubt had the object of securing to some extent finality for such decrees, the section does not say as it might have done that no Court shall try any issue already decided by such a decree so as to bar a defendant in a suit brought against him from raising the issue." Again, in *Lal Govind Nath Sahi Deo* v. *Lal Maheswar Nath Sahi Deo*(2) Wort, J. dealing with the application of section 258 with reference to a decision under section 89 observed:—"The words 'directly or indirectly' in the section, in my judgment, apply to the machinery used for the purpose of altering the decision and not to the result, that is to say, assuming for the moment that the plaintiffs succeed in this suit, they will have a declaration which in its effect contradicts the record; but that does not directly or indirectly alter the decision of 1910. No proceedings can be brought other than those allowed by the Act to change that decision directly or indirectly. But the record remains there and in my judgment they have not directly or indirectly altered it".

Now, on a reference to the plaint of suit no. 52 of 1921 we find that the reliefs claimed in that plaint were as follows:—

(a) That it be declared that the plaintiffs have title as set forth above by deed, decree of court, partition, etc., as also by adverse possession for several 12 years in the property specified in Schedule A of the plaint.

(1) (1921) A. I. R. (Pat.) 218.
(2) (1928) I. L. R. 7 Pat. 388.

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(*b*) That the plaintiffs' possession over the said property be confirmed but in case it be held by the court that in consequence of the said order of the Judicial Commissioner or for any other reasons the plaintiffs are to be considered out of possession then the plaintiffs be put in possession of the property.

(*c*) That permanent injunction as also a temporary injunction till the disposal of this suit be issued restraining the defendant from interfering with or disturbing or seeing (? seeking) to interfere or disturb the plaintiffs' possession of the property in suit or seeking to obtain possession of any portion of the property.

(*d*) That the defendants 5 to 11 only be declared to be in possession of the land of Schedule B as tenants under the plaintiff at the rental entered in the Road Cess paper.

It seems to us clear that the Revenue Officer could not have entertained any suit under section 87 for reliefs (*a*), (*b*) and (*c*) and the only prayer in the plaint which can be open to objection in view of section 258 is prayer (*d*). We have already stated that the Revenue Court could not entertain a suit for recovery of possession and as was pointed out by Das, J. in his judgment to which we have already referred, the previous decision of the Revenue Officer under section 87 between the parties to this appeal was merely a decision on the question of possession and not on the question of title. That being so, the plaintiff was not debarred from establishing his title in a Civil Court. In fact the petition of compromise filed in the suit of 1921 recites " that the present suit has been instituted on account of the adverse decision on appeal of the case under section 87 of the Chota Nagpur Tenancy Act and also as there was no second appeal allowed in law after that decision ". In this view as well as because it is conceded that the present case will be governed by the old Act as it stood previous to the amendment of sections 87 and 258 in 1920 it is unnecessary to discuss the effect of that amendment. We are, however, clearly of the opinion that the Civil Court was competent to deal with the suit instituted by the plaintiff in 1921 and the compromise arrived at in that suit was valid and binding upon the parties. Even assuming that prayer (*d*) in the plaint standing by itself offends against the provisions of section 258 we do not see how the compromise can be held to be not binding on the parties. The plaint of the suit

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must be read as a whole and if the Court was competent to try the suit, it was also competent to record the compromise. The particular clause of the compromise which is said to be objectionable runs thus:—

"That some of the plots within the aforesaid share which has been entered as raiyati of some of the defendants as shown in the schedule attached to the petition, shall remain in their possession and that they, the defendants, shall retain possession over them as raiyats on payment of rent."

It is said that this clause created a new tenancy and so the compromise required registration under section 17 of the Registration Act. The argument again presupposes that the compromise decree so far as this clause of the petition of compromise is concerned was without jurisdiction, but even if we assume this we could not accept the contention that it required registration. We find that the compromise was arrived at before the amendment of the Registration Act in the year 1929 and therefore under section 17, clause (*vi*), it was not necessary to register the decree passed on the basis of the compromise. It is true that section 17(*2*)(*vi*) must be read subject to clause (*1*)(*d*), but in our opinion the disputed clauses of the compromise did not amount to a lease or an agreement to lease but to a mere recognition of an existing right and therefore did not require registration. We think therefore that the judgment and the decree of the learned Judicial Commissioner should be set aside and as none of the other issues were pressed in this Court, we direct that the decree of the trial court is to be restored. The appellant will get his costs in all the courts.

*Appeal allowed.*

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## FULL BENCH.

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October, 17. November, 11.

*Before Courtney Terrell, C.J., Dhavle and Agarwala, JJ.*

GALLIMORE

*v.*

GALLIMORE.*

*Divorce Act*, 1869 (*Act IV of* 1869), *sections* 7, 16 *and* 17—*decree for dissolution passed by District Judge, if subject*

* Matrimonial Reference no. 6 of 1932, made by F. G. Rowland, Esq., I.C.S., District Judge, Muzaffarpur, by his letter no. 95/M., dated the 19th November, 1932.