1901 NOV. 14.

CRIMINAL REVISION.

29 C. 245.

complied with in the present case. It is suggested that the peon would be protected [247] under clause (2) of s. 141 of the Penal Code, and the petitioners would have no right to resist the peon. But all we need say with regard to that clause is that it would not have the effect of making an assemblage of persons an unlawful assemblage, if the object with which they assembled was a perfectly legal one. We think that this warrant was not a legal warrant, and that the petitioners therefore cannot be convicted under s. 147. But the petitioners were only entitled to resist the execution of this warrant, and it appears from the judgment of the Lower Court that the fourth petitioner, Rakhal Bagdhi, exceeded the right which he had and inflicted a severe injury with a *lathie* on the decree-holder's *gomastha*. That he had no right to do. In our opinion, therefore, the conviction of Rakhal Bagdhi of an offence under s. 325 was lawful, and that conviction will stand. The rule, therefore, will be made absolute for setting aside the conviction and sentence which was passed on the three petitioners—Uma Charan Singh Rai, Amulya Charan Singh Rai, and Karuna Singh Rai, but it will be discharged in so far as it relates to the setting aside of the sentence passed on Rakhal Bagdhi.

---

29. C. 247.

APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Brett.

JAGANNATH MANJHI, *v.* JUMMAN ALI PUTWARI.*

[5th December, 1901.]

Landlord and Tenant—Bengal Tenancy Act (VIII of 1885) ss. 52, 154—Additional rent for excess land—Back rent—Suit for rent.

There is nothing in the Bengal Tenancy Act to prevent the landlord from claiming back rents for any additional area under s. 52 of that Act, if such additional area was in the use and occupation of the raiyat, provided the period for which the claim is made is within that prescribed by the law of limitation.

THE defendants, Jagannath Manjhi and others, Nos. 1, 2 and 4, appealed to the High Court.

[248] The plaintiffs, Jumman Ali Putwari and others, who are howladars under the *pro forma* defendants, alleged that the tenants defendants Nos. 1 to 4 held, under a separate holding, 1 drone 3 kanis 8 and odd gandas of land in a chur mauzah within the zemindari of the *pro forma* defendants at an annual *jama* of Rs. 213-6-10, that there was a stipulation in the kabulyats of the tenants defendants for payment of rent for additional land in their occupation found on measurement at the rates prevalent in the pergunnah; and that upon measurement made by the plaintiffs in the month of Magh 1299 B. S. (1893 A. D.), the tenants defendants were found to be in possession of excess lands amounting to 2 drones 9 kanis 1 and odd gandas. The plaintiffs accordingly sued for rent for the years 1300 B. S. to 1303 B. S., after assessment of rent for the said excess lands and consolidation of the same with the old rent.

The tenants defendants contended, *inter alia*, that, assuming that the plaintiffs could recover additional rent, the claim for additional rent

*Appeal from Original Decree No. 55 of 1898, against the Decree of S. N Huda, Esq., Officiating District Judge of Noakhali, dated the 28th of January 1898.

1901 DEC. 5.

APPELLATE CIVIL.

29 C. 247.

for the years 1300 to 1303 B. S. was not maintainable: they could only recover additional rent for the future from the year 1304 B. S.

The District Judge, overruling the other objections raised by the defendants, found that the measurement made by the amin under the order of the Court as to the quantity of the excess land was more accurate than that made by the plaintiffs, showing a less quantity thereof in the occupation of the tenants defendants, and accordingly gave the plaintiffs a modified decree, holding that back rents for the excess land were recoverable.

Dr. *Asutosh Mukerjee* and Babu *Jogendra Chunder Ghose* for the appellants.

Dr. *Rashbehari Ghose* and Babu *Akhoy Kumar Banerjee* for the respondents.

GHOSE AND BRETT, JJ. This is a suit for recovery of rent in respect of certain lands held by the principal defendants as raiyats under the plaintiffs, who, it appears, have obtained a howladari [249] lease of the same from the zemindar defendants. It comprises a claim for additional rent for excess area in the occupation of the defendants.

The learned District Judge has given the plaintiffs a modified decree; and against that decree the principal defendants have appealed to this Court.

The first point that has been raised on behalf of the appellants by their learned Vakil is that the suit is not maintainable for non-joinder of necessary parties, it being contended that one Hari Charen Majhee to whom the defendants had sold a portion of their raiyati interest has not been included as a party defendant, and that the zemindar defendants should have been added as party defendants. The second ground taken is that under the terms of the grant in favour of the plaintiffs, they are not entitled to recover any additional rent in respect of any excess area in the occupation of the defendants. And the third ground urged upon us is that, supposing the plaintiffs are entitled to any rent for any excess area in the occupation of the defendants, still they cannot recover it, until the amount of such excess area has been determined in the present case. These are the principal contentions raised before us. One or two other points were also mentioned, but they were not seriously urged.

So far as the first-mentioned contention is concerned, it appears, on looking at the kobala executed by the principal defendants in favour of Hari Charan Majhee, that they assigned over to him a certain specified portion of the holding in their occupation, and bearing a proportionate rent payable to the landlord, liberty being reserved to the assignee to use his name both in the sudder and in the mofussil, meaning thereby that the vendee should be entitled to have his own name entered in the zemindar's rent roll, in expunction, as it were, of the names of the vendors; and also to put himself forward as the owner of those lands in the mofussil. And we find that, as a matter of fact, the said Hari Charan Majhee has entered into a separate settlement in respect of the lands thus assigned to him—the result being that the original holding in the occupation of the principal defendants has been made into two [250] holdings—one in favour of the defendants and the other in favour of Hari Charan Majhee. That being so, it is obvious that neither the zemindars nor Hari Charan Majhee were necessary parties to this suit. We accordingly overrule the first point raised before us.

1901 DEC. 5.

APPELLATE CIVIL.

29 C. 247.

With reference to the second question raised, whether, under the terms of their grant, the plaintiffs are entitled to recover additional rent for excess lands, the learned Vakil for the appellants has, in the course of his argument, relied upon the following provision in the howladari pottah executed in favour of the plaintiffs:—

"That you shall not hold possession of any land in excess of those covered by this pottah. If, on inquiry made in future, any excess land be found in your possession, we will be competent to evict you from such excess land, and settle it with a third party as khudkast, and to this you shall not be competent to take any objection."

His contention is that the zemindars, while granting this howladari lease to the plaintiffs, did not intend to create any interest in them as regards any excess lands found within the boundaries specified in that lease. On referring, however, to the other provisions of the pottah, we find that it was a lease of all the lands comprised within the boundaries specified at the foot of the document. No doubt, the said boundaries were said to contain a certain specified area; but we are unable to hold, as it has been contended, that the zemindars really intended to deprive the lessees of any land within the said boundaries if, on a measurement thereafter made, the actual quantity as comprised therein would appear to be in excess of the quantity specified in the pottah itself. It would rather appear that this provision had reference to any lands outside the boundaries specified in the pottah, and this would be but consistent with reason and common sense.

Upon these grounds we also overrule this point.

Now, as regards the third point raised before us, it appears that in the year 1299 B. S., the plaintiffs caused a measurement of the lands said to be in the occupation of the appealing defendants, and it was upon the footing of this measurement that they claimed [251] rent for 1300 B. S. and the following years. Under the orders of the District Judge, a measurement of the said lands was made in the course of this suit by an amin, who was deputed for that purpose, and the District Judge has found that a small portion of the lands measured by the plaintiffs' people in 1299 as in the occupation of the defendants is not in their possession, but in the possession of some other party, and that the defendants are liable to pay additional rent for the excess area that was found in their occupation. The contention of the appellants, however, is that, until a determination was come to in the course of this suit as to the quantity of excess land in their occupation, no back rent could be claimed. No doubt, section 52 of the Bengal Tenancy Act merely lays down the liability to pay additional rent for excess lands proved to be in the occupation of a raiyat; but there is nothing in the Act itself to debar the landlord from claiming back rents for any additional area, if such additional area is in the use and occupation of the raiyat, provided, of course, the period for which such claim is made is within the statutory period as prescribed by the Limitation Act. It will be further observed that there is no such provision in section 52 or any other section of the Act, as is to be found in section 154, which prescribes the time from which a decree for enhancement of rent is to operate. And we further find that the precise question raised before us was considered in an unreported case (1) by a Division Bench of this Court, and it was there held that the landlord is entitled to claim back

(1) Appeal from Original Decree No. 359 of 1898, decided on the 14th December 1900.

1901 DEC. 5. APPELLATE CIVIL. 29 C. 227.

rent for the land found in his occupation. This view seems also to be supported by some of the observations of another Division Bench of this Court in the case of *Assanullah Bahadur* v. *Mohini Mohan Das* (1). Upon these grounds we are unable to accept the contention of the learned Vakil for the appellants; and we accordingly also overrule it.

The result is that this appeal will be dismissed with costs.

Appeal dismissed.

29 C. 252.

[252] *Before Mr. Justice Hill and Mr. Justice Brett.*

DURGA CHURN LAW *v.* HATEEN MANDAL.* [12th March, 1901.]

Res judicata—Bengal Tenancy Act (VIII of 1885), ss. 104, cl. (2), 107—Civil Procedure Code (Act XIV of 1882), s. 8.

During the preparation of record-of-rights of an estate under section 103 of the Bengal Tenancy Act by a Settlement Officer, the landlord put in a petition under section 104, clause (2) of the Act for settlement of rent of a certain tenant's holding. The tenant, notwithstanding the fact that notice was served upon him, did not adduce any evidence, and the Settlement Officer decided that the tenant was an occupancy raiyat, and fixed a fair and equitable rent for the holding. Against this decision of the Settlement Officer, no appeal was preferred to the Special Judge. Subsequently a suit was brought in the Civil Court by the tenant to have the class to which he belonged and the nature of his holding, *i.e.*, whether the rent was enhancible or not, determined. The defence of the landlord was that, having regard to the decision of the Settlement Officer, the question could not be re-opened.

Held, that under the provisions of section 104, clause (2), and section 107 of the Bengal Tenancy Act, the decision of the Settlement Officer amounted to a decree, and the matters determined by that decision could only be re-opened on an appeal to the Special Judge. As no appeal was preferred, the decision became final, and the questions decided in that could not be re-opened in this suit.

THE defendants, Durga Churn Law and others, appealed to the High Court.

These appeals arose out of two suits brought by the plaintiffs for declarations that they were permanent tenure-holders, and that their tenures were not liable to enhancement. The allegations of the plaintiffs were that they were permanent tenure-holders of certain lands in Taraf Chourashi of which the defendants were the proprietors; that the tenures were in possession of the plaintiffs and their predecessors from before the time of the Permanent Settlement, and therefore the rents were not liable to enhancement; [253] that the defendants applied to the Settlement Officer, 24-Parganas, in the course of a settlement proceeding, under section 104, clause (2) of the Bengal Tenancy Act, for settlement of rents of the tenures, they got an *ex parte* decree by adducing false evidence, and without serving notices on the plaintiffs; that the Settlement Officer decided that the plaintiffs were occupancy raiyats, and that their holdings were liable to enhancement and fixed the rents; that the decision of the Settlement Officer was *ultra vires*, and hence these suits were brought. The defence

* Appeals from orders Nos. 166 and 167 of 1899, against the order of Babu Rajendra Coomar Bose, Subordinate Judge of 24-Parganas, dated the 9th of March 1899, reversing the order of Babu Srigopal Chatterjee, Munsif of Baraset, dated the 24th of September 1898.

(1) (1899) I. L. R. 26 Cal. 739.