

he is not able to say a word [498] in his defence. That, however, is a question for the Legislature—not for us.”

The appeal must be dismissed with costs.

RAMPINI, J. I agree.

MITRA, J. I agree.

Attorneys for the applicant : Messrs. Sanderson & Co.

Attorneys for the petitioner : Messrs. Leslie and Hinds.

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APPEAL
FROM
ORIGINAL
CIVIL

30 C. 489.

30 C. 498.

APPELLATE CIVIL.

KIRON CHUNDER ROY v. NAIMUDDI TALUKDAR.* [30th March, 1903].
“Lease of land”—Revenue sale Law (Act XI of 1859) s. 37, cl. 4—‘Permanent building.’

The word ‘lease’ in sub-s. 4 of s. 37 of Act XI of 1859 does not mean a lease from the zemindar only.

[Dist. 9 C. W. N. 852 ; 23 I. C. 917 ; Ref. 12 C. W. N. 1029 ; 19 C. W. N. 240 ; 46 Cal. 700—23 C. W. N. 315—50 I. C. 406 ; 7 I. C. 327.]

SECOND APPEAL by the plaintiffs, Kiron Chunder Roy and others.

This appeal arose out of an action brought by the plaintiffs to recover *khas* possession of two plots of land on a declaration of their zemindari right thereto, and non-existence of any under-tenure of the defendants. The allegation of the plaintiffs was that on the 10th January 1888, Zemindari No. 3842 was sold for arrears of Government revenue and was purchased by the plaintiff No. 1 and Upendra Chunder Roy in the name of one Kali Krishna Bose ; that they took possession of the property ; that a deed of release having been executed by the *benamdar* in their favour, their servant went to take rent and *kabuliats* from the [499] *karsha* raiyats, but was opposed by the defendants ; that they having purchased the zemindari free of incumbrances, the defendants, under-tenure, if any, could not stand as against them. The defence of some of the defendants was, that the plaintiffs had no cause of action against them, they having no under-tenure in the disputed land. And that of the others was, *inter alia* that the plaintiffs had no cause of action and right of suit ; that a part of plot No. 1 was the *karsha* of Runjit Khan, a maternal uncle of the defendants, which was held by them for a long time, and that the remaining portion of the said plot was held and enjoyed by them as *khamar*, from time immemorial, by cultivating the same and by dwelling thereon.

The Court of First Instance decreed the plaintiffs’ suit in part and declared that the plaintiffs were entitled to get *khas* possession of that part of plot No. 1 on which the garden and tanks did not stand, and of the whole of plot No. 2. The material portion of his judgment was as follows :—

“ From the evidence on both sides it has been proved that on plot No. 1 there is a garden, tank and homestead. The homestead, that is, the dwelling-house, must according to section 37, Act XI of 1859, be a permanent building. As, according to defendant No. 25, some tin sheds and cottages formed that dwelling-house, they do not come under the dwelling-house, which is protected from removal under that section. The lease of the land on which those tin sheds and cottages stand are not therefore legally protected from avoidance.

* Appeal from Appellate Decree No. 1828 of 1900, against the decree of A. Goodeve, Officiating District Judge of Jessore, dated the 25th of May 1900, reversing the judgment and decree of Debendra Lal Shome, Subordinate Judge of Khulna, dated the 2nd of March 1900.

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"The lease of the land on which the garden and tank stand is protected from cancellation. If clause 4, s. 37 be strictly construed, it follows that the whole of the two plots which form one lease, is protected from the plaintiff's claim for *khas* possession. In my opinion the meaning of that clause is that, that portion of land on which gardens and tanks stand should be exempted from the claim."

On appeal the District Judge of Jessore held that the defendants-appellants were protected by their lease from ejection from both the plots of land in dispute; and he accordingly allowed the appeal. Against that judgment the plaintiffs now appeal.

Senior Government Pleader (Babu Ram Charan Mitter) for the appellants contended that the lease that was produced in the case, was not a lease granted by the defaulting proprietor. "Lease" in cl. (4) s. 37 of Act XI of 1859, means a lease by the proprietor; and the nature of the "dwelling-house" contemplated therein must be of a permanent character. The [500] lease in this case was granted by a tenure-holder, and it therefore does not come within the purview of that section.

Dr. Ashutosh Mookerji and Babu Jodu Nath Kanjilal for respondents were not called upon.

MACLEAN, C. J. I do not think we can interfere in this case. I am not disposed to accept the view of the learned Government Pleader that a lease in sub-section 4 of section 37 of Act XI of 1859 can only mean a lease from the zemindar. There is no such qualification in the section. It only says "leases of lands whereon, &c.; and, in the present case there is undoubtedly a lease of land. I am not disposed to think that a tin shed is a "permanent building" within the meaning of the section. The inclination of my opinion is the other way: but it has been found here that there are gardens and tanks on the land and that there is only one lease covering the whole land in dispute, and that being so, it seems to me that the lessees have brought themselves within the exception.

The appeal, therefore, must be dismissed with costs.

MITRA, J. I concur.

Appeal dismissed.

30 C. 501.

APPELLATE CIVIL.

[501] MAHOMED ALI AMJAD KHAN v. SECRETARY OF STATE FOR INDIA.* [1st April, 1903.]

Decree—Court-fee—Memorandum of appeal, valuation of—Land Acquisition Act (I of 1894) suit under—Court-fees Act (VII of 1870) ss. 8, 11.

In cases under the Land Acquisition Act (I of 1894), the decree awarded in appeal must be limited to the amount for which court-fee had been paid on the memorandum of appeal.

[Ref. 53 P. R. 1906=103 P. L. R. 1906; 36 Bom. 360.]

APPEALS by the plaintiff, Mahomed Ali Amjad Khan.

These appeals arose out of the proceedings taken under the Land Acquisition Act. The Government acquired two plots of land in the town of Sylhet, belonging to the plaintiff. Up to 1897 there was a bungalow on each of these plots, both of which used to be occupied by European officials. After an earthquake these bungalows having fallen down, the Government acquired these two plots of land. The District Judge of

* Appeals from Original Decrees Nos. 66 and 87 of 1900, against the decree of B. V. Nicholls, Offg. District Judge of Sylhet, dated Nov. 17, 1899.