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third Deputy Magistrate for disposal. The case was then tried by the last-named Deputy Magistrate as against Punchanand Das and ended in the conviction of that person. Thereupon, the complainant applied to the trying Deputy Magistrate that the other persons named in his complaint might be brought before the Court and tried also; but the application was rejected by the Deputy Magistrate on the 20th of March 1902. The District Magistrate afterwards called for the case, as he says, under the provisions of section 435 of the Code of Criminal Procedure. After referring to the record and making certain criticism on the judgment of the Deputy Magistrate who had tried the case, he recorded the following order on the 5th of April 1902:—

"I now order the prosecution of the Police Sub-Inspector, Soshi Chowdhuri, and Sub-Manager, Radhabullav Roy Chowdhuri, under section 504 of the Indian Penal Code."

It is this last order with which we are now concerned. It has been urged before us on the part of the petitioners that the Magistrate acted without jurisdiction, inasmuch as there was no case before him in which he could pass the order in question. The District Magistrate has submitted in his explanation that the case was before him, inasmuch as he had taken it upon his file on the 22nd of January, and he submits that the order now in question was but a supplementary order to that which he made on that date for the summoning of Punchanand Das.

We think that when once the District Magistrate made the case over for disposal to the Deputy Magistrate, it was out of his [452] hands and he was not competent to pass any order relating to it other than an order such as might have been made by him under Chapter XXXII of the Code. That the case was not in fact upon his own file was indicated by his own action in sending for the record, as he says, under section 435.

We may refer to the case of *Moul Singh* v. *Mahabir Singh* (1) and the case of *Golapdy Sheikh* v. *Queen-Empress* (2) of the same volume as having some bearing on the present case.

We think that the order of the District Magistrate cannot stand, and we therefore make this Rule absolute, and set it aside.

We may mention that we have just set aside the conviction in the case of Punchanand Das on the ground that the facts proved do not constitute an offence punishable under section 504 of the Indian Penal Code.

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30 C. 453(=7 C. W. N. 402.)

[453] APPELLATE CIVIL.

FAZLUR RAHIM ABU AHMED *v.* DWARKA NATH CHOWDHRY.*

[18th Feb. and 4th March, 1903.]

Jurisdiction—Munsiff, jurisdiction of—Rent, suit for—Bengal Tenancy Act (VIII of 1885) s. 144—Civil Procedure Code (Act XIV of 1882) ss. 15 and 17—Civil Courts Act (XII of 1887), s. 19—Cause of action—Pecuniary limitation—Second appeal.

* Appeal from Order No. 211 of 1901, against the order of W. Teunon, Esq., District Judge of Murshidabad, dated the 3rd April 1901.

Appellate Bench: Sir Francis W. Maclean, K. C. I. E. Chief Justice, Mr. Justice Sale and Mr. Justice Stevens.

(1) (1899) 4 C. W. N. 242. (2) (1900) I. L. R. 27 Cal. 979.

Section 144 of the Bengal Tenancy Act is controlled by ss. 15 and 17 of the Civil Procedure Code; a suit for rent is therefore to be instituted, subject to pecuniary limitations, in the Court of the lowest grade competent to try it.

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SECOND APPEAL by the plaintiff, Fazlur Rahim Abu Ahmed.

This appeal arose out of an action for arrears of rent due on a putni tenure for the years 1303—1306 B.S. The allegation of the plaintiff was that his father was in possession of the putni taluq as a registered proprietor and as *Matwalli* of the *waqf* property of one Kiamunissa Bibi. On the death of his father in 1303 B.S. the plaintiff became the registered proprietor as *Matwalli* in place of his deceased father. The rent claimed was under one thousand rupees, but the tenure in connection with which the suit was brought was admittedly of the value of Rs. 4,500, and was within the local limits of the jurisdiction of the Munsif of Kandi and of the Subordinate Judge of the district of Murshidabad. The defendants were residents within the local limits of the jurisdiction of the Munsiff of Singapore, but the suit was instituted in the Court of the Munsiff of Kandi on the ground that the cause of action arose within the local limits of his jurisdiction. The defendants contended, *inter alia*, that under s. 144 of the Bengal Tenancy Act, the Court had no jurisdiction to entertain the suit; and that the plaintiff was not entitled to the rents claimed. The [454] learned Munsiff having overruled the objections of the defendants, decreed the plaintiff's suit. On appeal the District Judge of Murshidabad, Mr. W. Teunon, held that, having reference to s. 144 of the Bengal Tenancy Act, the cause of action in rent suits must be deemed to have arisen within the local limits of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure; and in this case the cause of action must be deemed to have arisen within the local limits of the jurisdiction of the Subordinate Judge. The learned District Judge accordingly decreed the appeal, and directed the plaint to be returned to the plaintiff for presentation in the proper Court.

Babu *Saroda Churn Mitter*, for the respondent, took a preliminary objection as to the form of the appeal. He contended that the appeal was presented as an appeal from an order, with a court-fee of Rs. 2, but it should have been presented as an appeal from a decree and full court-fees ought to have been paid. It is a decree under s. 2 of the Civil Procedure Code, and not an order under s. 588, cl. (6). This clause applies to an order passed by the Court of first instance, and not to an order made in appeal: see *Bindeshri Chaubey* v. *Nandu* (1).

Dr. *Ashutosh Mookerjee*, for the appellant, relied upon the case of *Goor Bux Sahoo v. Birj Lal Benka* (2), which supported his contention that the order appealed against was an order, and not a decree, and it was appealable under s. 589 of the Code of Civil Procedure.

The question to be decided in this appeal is as to the jurisdiction of a Court to try a suit for rent. It depends upon the construction of s. 144 of the Bengal Tenancy Act. This section refers merely to local, and not to pecuniary, jurisdiction. It ought to be read with s. 17 of the Civil Procedure Code, which refers by implication to s. 15 of the Code. See also ss. 18 and 19 of the Civil Courts Act (XII of 1887). But for s. 15 of the Civil Procedure Code, under s. 18 of the Civil Courts Act, a Subordinate Judge and also a Munsiff would have concurrent jurisdiction over the subject-matter of the

(1) (1881) I. L. R. 3 All. 456. (2) (1899) I. L. R. 26 Cal. 275.

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suit. Section 144, cl. (1) of the Bengal Tenancy Act does not in any [456] way affect the provisions of the Civil Courts Act. In ss. 16 and 17 of the Civil Procedure Code the pecuniary limits and local limits are kept apart.

Babu *Saroda Churn Mitter* for the respondent. Chapter XIII of the Bengal Tenancy Act deals with judicial procedure, and cl. (2) of s. 143, which is in chapter XIII of the Act, makes the Civil Procedure Code applicable to suits between landlord and tenant. Then comes s. 144, which says that for the purposes of the Civil Procedure Code, cause of action in all suits between landlord and tenant as such shall be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought. Section 144 became necessary to be inserted, as ss. 16 and 17 of the Civil Procedure Code do not expressly deal with suits for recovery of rent. The words "subject to limitations aforesaid" in s. 17 of the Civil Procedure Code do not refer to s. 15, but to s. 16 of the Code, and subject to pecuniary limitations prescribed by any law.

A suit for rent is no doubt upon a contract, and as such it would come within the local limits of the Court within the jurisdiction of which the contract was made, but in s. 144 of the Bengal Tenancy Act a limitation is given, *i.e.*, the residence of the defendant should not be taken into consideration, but only the cause of action should be taken into consideration. The cause of action and local limits in s. 144 of the Bengal Tenancy Act have reference to s. 17 of the Civil Procedure Code. Sub-section 2 of s. 144 supports my contention. It would seem, reading the two sub-sections, that all suits and application by landlord and tenant must be decided by one Court, and that Court being one which has jurisdiction to decide suits for recovery of possession. Section 144 does not refer to pecuniary jurisdiction, but only to local jurisdiction. Sections 17 and 18 of the Civil Courts Act (XII of 1887) deal with pecuniary jurisdiction of Courts. Competency to try a suit depends upon local as well as pecuniary jurisdiction, and the question of pecuniary jurisdiction would arise after the question of local jurisdiction has been decided. Section 15 of the Civil Procedure [456] Code would not limit the operation of s. 144 of the Bengal Tenancy Act. Section 15 has no application where there is only one Court.

Dr. *Ashutosh Mookerjee* in reply.

Cur. adv. vult.

MACLEAN, C. J. The question we have to decide is whether the Munsiff had jurisdiction to entertain the present suit. A preliminary objection has been taken to the competency of this appeal but in my opinion an appeal lies: see *Goor Bux Sahoo* v. *Birj Lal Benka* (1).

Upon the question of jurisdiction, the suit was for rent due on a putni tenure for a sum under Rs. 1,000, but the capital value of the tenure was over that sum—about Rs. 4,500. The sum sued for is within the pecuniary limits of the Munsiff's jurisdiction, but the Subordinate Judge's Court would be the one to entertain a suit for the possession of the tenure.

The Court below held that the Munsiff had no jurisdiction and returned the plaint. The plaintiff appeals.

(1) (1899) I. L. R. 26 Cal. 275.

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The question appears to me to turn on the true construction of section 144 of the Bengal Tenancy Act, and sections 15 and 17 of the Code of Civil Procedure. The Court below has not referred to the latter sections.

Section 144 lays down where the cause of action in suits between landlord and tenant shall "*for the purposes of the Code of Civil Procedure*" be deemed to have arisen : it does not say in which Court the suit is to be instituted. To ascertain this we must go to section 17 of the Code of Civil Procedure. Section 16 does not apply. Section 17 says that "all other suits," that is, other than those mentioned in section 16, "shall be instituted in a Court within the local limits of whose jurisdiction the cause of action arises." This in the case of suits between landlord and tenant is controlled by section 144 of the Tenancy Act, which tells us where in such suits the cause of action shall be deemed to have arisen, *viz.*, "within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought."

[457] If the matter rested there, the point would be reasonably clear. But the provision in s. 17 is made expressly "subject to the limitations aforesaid," which, looking at s. 16, must include a pecuniary limitation, and under s. 15 of the Code, "every suit *shall* be instituted in the Court of the lowest grade competent to try it." It must mean the particular suit then before the Court.

Under s. 19 of the Civil Courts Act (XII of 1887) the Munsiff has jurisdiction to try cases up to a pecuniary limit of Rs. 1,000. The present suit is for a sum under that amount, and consequently the Munsiff would have jurisdiction to deal with the case unless s. 144 of the Tenancy Act be a bar. The cause of action arose in the case within the local limits of the Munsiff's Court. There is no reported case where any contention such as that of the present defendants has ever been raised, and there must have been many cases in which Munsiffs have dealt with cases similar in their circumstances to the present.

We cannot deal with the case as one depending upon s. 144 of the Tenancy Act alone : we must read that section with the sections of the Code to which I have referred, seeing that s. 144 in layipg down where the cause of action shall be deemed to have arisen states that it is for the purposes of the Code of Civil Procedure.

Looking at all the sections to which I have referred, I think they may fairly bear the construction, that the Munsiff had jurisdiction to try the present case.

The appeal therefore must be allowed and the case remanded to be tried on the merits. The costs of this appeal will abide the result.

SALE, J. I agree.

STEVENS, J. I agree.

Appeal allowed, case remanded.