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32 C. 509=9 C. W. N. 348 =1 C. L. J. 91.

Subordinate Judge holds that non-specification of the exact share in the sale-notification is an irregularity. His judgment, however, shows that in his opinion it is not a material irregularity; and, unless the irregularity was such as would be considered material and would necessarily induce inadequacy of price, I do not think that the sale should be set aside. The mere fact that the share was not specifically given in the proclamation is not sufficient to show that the sale did not take place in accordance with the provisions of section 6 of Act XI of 1859.

This, in my opinion, is quite sufficient for the disposal of the case; and it is not necessary for us to go into the other question, namely, whether substantial loss resulted on account of the irregularity.

If I were to decide the question under what circumstances there may be a necessary inference of substantial loss on account of any irregularity, the mere inadequacy of price cannot certainly be the sole ground upon which we can conclude that the one is the cause of the other. If I had not agreed with my learned brother in dismissing the suit on the first ground, I would have remanded the case for a retrial of the question as to whether, upon the whole case, having regard, not only to the irregularity in the sale proclamation, if any, and to the inadequacy of price, but to other circumstances, as well, there could be a necessary inference of substantial loss resulting from the irregularity.

Since I agree with my learned brother on the first point, it is not necessary for me to say anything further on the second point.

The appeal is decreed with costs.

Appeal allowed.

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32 C. 518 (=9 C. W. N. 504=1 C. L. J. 239.)

[518] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Pargiter.

SUDHENDU NARAIN ACHARJYA CHOWDHRY *v.* GOBINDA NATH SIRCAR.*
[27th February, 1905.]

Record-of-rights—Bengal Tenancy Act (VIII of 1885), ss. 101 to 106—Settlement officer, jurisdiction of.

The particulars specified in s. 102 of the Bengal Tenancy Act, when recorded and compiled under s. 103, amount to a "Record-of-rights" as contemplated in Chapter X of the Act; and proceedings taken by a Revenue Officer, after making a record of the particulars under s. 103, including those under s. 105 of the Act are not therefore void for want of jurisdiction.

***Dharani Kanta Lahiri* v. *Gaber Ali Khan* (1) relied upon.**

***Per* PARGITER J. The difference between s. 103 of the old Act and the present section is, that, under the former, the Revenue Officer was to record the particulars specified in s. 102; but under the present Act, s. 103 gives an applicant the right to select what particulars he may wish to have recorded. If the applicant asks that all or almost all the particulars mentioned in s. 102 be recorded, the record would constitute a "Record-of-rights"; but if only the particulars mentioned in clauses (a) and (c) of s. 102 be recorded, they not involving any rights, the record could hardly be called a "Record-of-rights."**

[Ref. 16 C. L. J. 67=16 I. C. 935.]

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* Appeal from Appellate Decree, No. 2100 of 1902, against the decree of B. V. Nicholl, Special Judge of Mymensingh, dated April 21, 1902, reversing the decree of Bhaba Taran Chatterjee, Settlement Officer of Mymensingh, dated September 28, 1900.

(1) (1902) I. L. R. 30 Cal. 339.

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SECOND APPEAL by the plaintiffs, Sudhendu Narain Acharjya Chowdhry, Brojendra Narain Acharjya Chowdhry and Surendra Narain Acharjya Chowdhury.

This appeal arose out of a suit brought by the plaintiffs abovenamed for settlement of fair rents of 122 tenants of the village of Digharkanda, and for enhancement of the rent payable by those tenants on the ground amongst others :—

(*a*) That they were in possession of more lands than they were paying rent for ;

[519] (*b*) that the rates at which they were paying rents were less than those prevailing in other villages ; and,

(*c*) that the price of staple food crops had risen within the currency of the present rents.

The Settlement Officer of Mymensingh decided (on the 28th September 1900) that the plaintiffs were entitled to an enhancement of 2 annas per rupee on account of the increase in the price of food crops, and considered it to be a fair and equitable rate of enhancement under section 105 of the Bengal Tenancy Act. Against this decision both the plaintiffs and the defendants appealed, on the 30th September 1902, to the Special Judge at Mymensingh, who delivered his judgment on the 21st April 1902, and held that the proceedings which were to result in a record-of-rights could not be instituted directly by the parties concerned, but only by Government either on its own initiative or at the instance of one or other of the parties, and the proceedings taken by the Revenue Officer after making the record of the particulars under s. 103, including those under s. 105 of the Bengal Tenancy Act, were void for want of jurisdiction ; and he accordingly dismissed the appeal of the plaintiffs and decreed that of the defendants.

The plaintiffs appealed to the High Court.

Babu *Ram Charan Mitter* and Babu *Dhirendra Lal Kastgir* for the appellants.

Babu *Harendra Narain Mitter* for the respondents.

GHOSE J. This appeal arises out of an application made by the landlord under section 105 of the Bengal Tenancy Act as amended by Act III (B.C.) of 1898 and Act I (B.C.) of 1903, for settlement of rent of the lands held by the tenant defendant, as comprised in the property in respect of which an application under section 103 had been made for a record-of-rights. The Settlement Officer allowed the application and raised the rent to some extent. Both parties appealed to the District Judge. That Officer has reversed the order of the Settlement Officer and dismissed the application, upon the ground that " all the proceedings taken by the Revenue Officer after making the record of particulars under section 103 including those under section 105 are void **[520]** for want of jurisdiction." It would appear that after the application was made by the landlord under section 103, the lands held by the tenants were surveyed and measured, the rent payable by them and their respective rights were recorded ; a draft record of rights was prepared and finally published, and the necessary certificate under section 103B of the Act was recorded by the Settlement Officer. No objection seems to have been raised by the tenants to these proceedings; and it was only after the matter had passed through the hands of the Settlement Officer that the question of jurisdiction was raised before the District Judge—a question that has found favour with that Officer, as already mentioned.

The learned Judge seems to think that the proceedings for the preparation of a record-of-rights, properly so-called, cannot be instituted directly by

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any of the parties concerned, but only by Government, either on its own initiative, or at the instance of one or other of the parties, in accordance with the provisions of section 101, and that though, under section 103 of the Act, the Revenue Officer records the particulars mentioned in section 102, yet it is not a record-of-rights within the meaning of the Act, in respect of which further proceedings can be taken in accordance with section 103A and the following sections of the Act.

Section 101 of the Act provides that the Local Government may order a survey and a record-of-rights to be made in respect of the lands in any local area, estate or tenure or part thereof, where the landlords or tenants, or a large proportion of the landlords or tenants, apply for such an order, or where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and landlords generally, or where the local area, estate or tenure belongs to, or is managed by the Government or the Court of Wards, or where a settlement of land revenue is being, or is about to be made in respect of the estate or tenure or part thereof. Section 102 provides the particulars to be recorded when such an order is made. Section 103, provides that, on an application being made by one or more of the proprietors or tenure-holders or a large proportion of the raiyats of any estate or tenure, a Revenue Officer may, subject to, and in accordance with, the rules made [521] by the Government, ascertain and record all or any of the particulars specified in section 102 with respect to the estate or tenure or any part thereof. Then follows section 103A, and it runs thus:

"(1) When a draft record-of-rights has been prepared, the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication."

"(2) When such objections have been considered and disposed of according to such rules as the Local Government may prescribe, and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent Roll has been incorporated with the record under section 104F, sub-section (3), the Revenue Officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this chapter."

"(3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof."

Section 103B provides that "a certificate signed by the Revenue Officer, stating that a record-of-right has been finally published under this chapter, shall be conclusive evidence of such publication; and every entry in a record-of-rights so published should be presumed to be correct until the contrary is proved."

Now it will be observed that these sections are contained in Chapter X of the Bengal Tenancy Act, which is headed "Record-of-rights and Settlement of Rents," and are included in "Part I—Record of-rights." No doubt, section 103 does not use, in terms, the expression "record-of-rights," as occurring in section 101; but it clearly provides for the ascertainment and the record of the same particulars, which would have to be ascertained and recorded in a proceeding ordered by Government, namely, the particulars specified in section 102.

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And when section 103A, which immediately comes in after that section, speaks of a draft record-of-rights being prepared and [522] published, it is extremely difficult to say that it applies only to the record-of-rights prepared in a proceeding ordered by Government under section 101 of the Act. There is, however a marked distinction between the cases contemplated by section 101, and those contemplated by section 103 of the Act. In the one case, an order may be made in respect of a large tract or area comprising many different estates, or in regard to an estate or tenure or part thereof, and where the landlords or tenants, or a large proportion of the landlords or tenants apply for such an order; while in the other case, the Revenue Officer may take action on an application made by one or more of the proprietors or tenure-holders, or by a large proportion of the raiyats of an estate or tenure. It is evident that section 101 applies where the record-of-rights is required for reasons of State, while section 103 applies where the proprietor or tenure-holder or a large proportion of the raiyats require for their own purposes, "authoritative official ascertainment and record" or the same particulars as would be recorded under an order made under section 101. Such ascertainment and record of the particulars, as are specified in section 102, must have some ultimate object in view; and, if we are to credit the Legislature with having any ultimate object in view, one may well realize that object by a reference to the following sections of the Act. It is impossible to believe that the only object which the Legislature had in view in framing section 103 was, as it has been contended before us by the learned Vakil for the respondent, that on the particulars mentioned in section 102 being ascertained and recorded either of the parties concerned might take such action as he might be advised for the purpose of asserting such rights in respect of the lands which he might be entitled to.

After section 103B comes in Part II, headed "Settlement of rents, preparation of settlement rent-roll and decision of disputes in cases where a settlement of land revenue is being or is about to be made." This part begins with section 104, and ends with section 104J. We are not concerned with these sections in this case. Then comes in Part III headed "Settlement of rents and decision of disputes in cases where a settlement of land revenue is not being or is not about to be made." And [523] the first section in this part is section 105. It runs thus :—"When, in any case in which a settlement of land revenue is not being made or is not about to be made, either the landlord or the tenant applies, within two months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue officer shall settle a fair and equitable rent in respect of the land held by the tenant." The other portions of the section need not here be referred to. Then we have section 106, and the following sections which speak of the determination of disputes arising before the Settlement Officer between the landlord and the tenant; and section 707 lays down that, in all proceedings for settlement of rents under Part III, and in all proceedings under section 106, the decision of the Revenue Officer shall have the force and effect of a decree of a Civil Court. If section 103A, which speaks of the preparation and the publication of the draft record-of-rights, applies to such a case as the present, there can be no question that the application that was made to the Revenue Officer under section 105 of the Act, for the settlement of rent was quite competent. The true question, therefore, that we have to determine in this appeal, is whether the particulars specified in section 102 when recorded and compiled under

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section 103, amount to a record-of-rights as comtemplated in Chapter X of the Act. It has already been pointed out that both sections 103 and 103A., as also section 102, are contained in Part I headed " Record-of-rights," and unless it could clearly be gathered from the scope of Chapter X, that the Legislature intended that a record of the particulars or rather of the rights as specified in section 102, when prepared under section 103, should be treated differently from record-of-rights prepared under an order made under section 101, we should not hold that, when section 103A speaks of the preparation of a " draft record-of-rights," it is meant to apply only to such record-of-rights as are prepared under orders of Government made under section 101. In this connection, reference may advantageously be made to Chapter X, and the various sections in that chapter, as they stood before the amending Act III (B.C.) of 1898, was promulgated. Upon an examination of these sections it will be found that, though material alterations **[524]** have been made in that Act by the amending Act, still, so far as the particular point, which arises in this appeal is concerned, there is substantially no difference. Section 103 is substantially the old section 103 with some modification. Section 103A is substantially the same as section 105 as it stood before the amendment, with some modifications. Section 105 is but a re-enactment with some modifications of the second part of the old section 104, under which an application could be made for the settlement of a fair and equitable rent. And on referring to the case of *Dharani Kanta Lahiri* v. *Gaber Ali Khan* (1) we find that a question very similar to that which is raised in this appeal was raised in that case ; and it was decided that sections 104 to 108 of the Bengal Tenancy Act applied to proceedings taken under section 103 in the same way as to proceedings taken under section 101, and that the record made under section 103 is in reality a record-of-rights within the meaning of the Act. We further find that, in a recent case (unreported) which came up before GEIDT, J. the question whether the record made under section 103 amounted to a record-of-rights within the meaning of the Bengal Tenancy Act was raised, and, following the case of *Dharani Kanta Lahiri* v. *Gaber Ali Khan* (1) to which we have just referred, the question was answered in the affirmative. No doubt, the Vakil on behalf of the respondent in that case conceded the point in favour of the appellant, but still the learned Judge, who had to decide it, evidently adopted the view that the proceedings of the Revenue Officer in the matter of a record made under section 103 amounted to a " record-of-rights " within the meaning of Chapter X of the Bengal Tenancy Act.

For these reasons I am of opinion that the learned Judge of the Court below is wrong in holding that all the proceedings taken by the Revenue Officer in this case, after making the record of particulars under section 103, including these under section 105 of the Act, are void for want of jurisdiction.

A question was raised before us on behalf of the respondent : whether an appeal lay against the order of the District Judge in this case ; but it is unnecessary to discuss this matter for the **[525]** simple reason that we have before us not only the appeal, but also an application under section 622, Code of Civil Procedure ; and it being a matter of jurisdiction, we are competent to deal with it, if not as an appeal, yet certainly in the exercise of our revisional powers as conferred by section 622 of the Code of Civil Procedure.

(1) (1902) I. L. R. 30 Cal. 339.

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The result is that this appeal is allowed, and the case sent back to the District Judge for being tried on the merits. Costs will abide the result.

PARGITER, J. I agree in the judgment delivered by my learned brother and wish to add a few remarks regarding section 103 of the Bengal Tenancy Act.

The material difference between the old section 103 and the present section is this:—Under the former, the Revenue Officer recorded the particulars specified in section 102, that is, all the particulars since no option was given to the applicants to select among those particulars; but under the present section the applicants can select which particulars they wish to have recorded. This seems to me to be an important change. The particulars selected are left entirely to the applicant's option, and the question arises whether the record of particulars prepared under the present section 103 does or does not constitute a "Record-of-rights."

This question must, it seems to me, be decided on the facts of each case. If the applicants ask that all or almost all the particulars mentioned in section 102 be recorded, the record would include rights and would no doubt constitute a "Record-of-rights." But if, for instance, a landlord (who has purchased at an auction-sale) applies to have only the particulars mentioned in clause (*a*) or in clauses (*a*) and (*c*) of section 102 recorded, these particulars do not involve any rights, and the record could hardly be called a "Record-of-rights." This appears to be a real distinction. In the former case, sections 103A and 105 could be applied; in the latter case, it seems to me, they could not be applied.

It is true that similar remarks with a similar distinction might be urged with regard to the "Record-of-rights" authorized [526] by section 101, because section 102 declares that the order of the Government shall specify which particulars shall be recorded and thus a similar selection is permitted. But the position under section 101 is different. Under that section Government can order a "Record-of-rights" to be prepared; that record is explicitly styled a "Record-of-rights;" the particulars recorded in it are a secondary consideration: whatever the particulars may be that are recorded does not affect the title of the record; whatever they are, the record is a "Record-of-rights" by the very language of section 101. In practice the distinction pointed out would no doubt be merely an academical one under section 101, for records prepared under clauses (*b*) and (*d*) of sub-section (2) of that section would necessarily embody rights, and though those prepared under clauses (*a*) and (*c*) might not necessarily include rights, yet it is not to be supposed that the Government would put section 101 in force in such cases where it was not intended to record rights.

Under section 103, however, the position is different, and the distinction is not obviously wholly academical. The particulars to be recorded may be whatever the applicants desire; the record is not expressly styled a "Record-of-rights," and whether the record of those particulars constitutes a "Record-of-rights" or not, must, it seems to me, depend on whether those particulars include rights or not. Where the record framed under section 103 embodies rights, the position is the same under the present section as it was under the old section, and the ruling in *Dharani Kanta Lahiri* v. *Gober Ali Khan* (1) holds good.

In all the present cases it is undisputed that whether the applications under section 103 were made under the old Chapter X or under the present Chapter X, the records framed have included rights. The records, therefore,

(1) (1902) I. L. R. 30 Cal. 339.

are "Records-of-rights," and sections 103A and 105 apply. I agree therefore in reversing the District Judge's decisions, and in the order passed by my learned brother.

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APPELLATE CIVIL.

Appeal allowed case remanded.

32 C. 527 (=1 C. L. J. 167).

32 C. 518=9 C. W. N. 504 =1 C. L. J. 239.

[527] APPELLATE CIVIL.

Before Mr. Justice Harington and Mr. Justice Mookerjee.

MAHOMED WAHIB *v.* MAHOMED AMEER.*

[3rd and 28th February, 1905.]

Limitation—Limitation Act (XV of 1877) Sch. II, Art. 62—Suit for money received by defendant for plaintiff's use.

B received from C money due from him on two deeds of mortgage.

A, who was entitled to a share of the money, instituted a suit for recovering his share from B more than three years after the receipt of the money by B:—

Held, that the money was received by B for A's use and that therefore the suit was governed by Art. 62 of Sch. II of the Limitation Act (XV of 1877), and not by Art. 120.

Nund Lall Bose v. *Meer Abco Mahomed* (1) and *Gurudas Pyne* v. *Ram Narayan Sahu* (2) distinguished.

[**Rel.** 17 I. C. 351; **Ref.** 37 Mad. 381; 33 All. 708; 59 I. C. 98; **Fol.** 30 Mad. 459=17 M. L. J. 452; 30 Mad. 298=17 M. L. J. 224=2 M. L. T. 382; 4 N. L. R. 84; **Ref.** 1 P. L. J. 374=20 C. W. N. 983; 37 All. 238; 434; **Ref.** 60 I. C. 698; 64 I. C. 312; **Dist.** 39 Mad. 62; 1 M. L. J. 705=1911 M. W. N. 220; 41 Cal. 171.]

SECOND APPEAL by the defendant first party.

The defendants second party executed in favour of the defendants first party two zurpeshgi mortgage deeds dated the 4th December and the 17th December 1890 respectively and borrowed two sums of Rs. 3,000 and Rs. 1,300. The deeds stood in the name of the defendant first party, but the plaintiffs had a share in the sums, which were advanced. The deeds provided that the mortgagees were to remain in possession for a period of ten years from 1298 to 1307 Fasli that the mortgagors would be entitled to redeem upon repayment of the loan in Jait 1307, and that they might also redeem at any time during the term, but that in such event, the mortgagee would be entitled to continue in possession till the end of the term upon payment of an annual rent specified in the deeds.

[528] On the 25th June 1896 the defendant first party received from the mortgagors, defendants second party, the whole of the two sums due under the deeds. The mortgagors thereupon transferred the properties to the defendants third party.

The plaintiffs claimed their proportionate share of the money realized by the defendants first party and also a certain sum of money for damages suffered by them by reason of the action of the defendants first party in allowing redemption and restoring possession to the mortgagors four years before the expiry of the term.

The defendants alleged that the plaintiff's share in the money had been paid to them, denied liability for damages, and stated that the claim, if any, was barred by the law of limitation.

* Appeal from Appellate Decree, No. 2203 of 1902, against the decree of W. H. Vincent, District Judge of Bhagalpur, dated July 3, 1902, confirming the decree of Jogendra Nath Ghose, Subordinate Judge of that District, dated Nov. 30, 1901.

(1) (1879) I. L. R. 5 Cal. 597. (2) (1884) I. L. R. 10 Cal. 860.