1905 JAN. 9.

APPELLATE CIVIL.

32 C. 418.

judgment therefore in favour of the plaintiff as against the defendant for an account is correct and the appeal must be dismissed with costs.

BODILLY J. I am of the same opinion.

MOOKERJEE J. I agree. I do not think that a suit for account can rightly be regarded as a suit against the debtor of a deceased [421] person for payment of his debt. I take the word "debt" in its ordinary and common acceptation, meaning all moneys which the deceased was entitled to receive as certain liability on bonds and other contracts.

In the case of *Sabju Sahib* v. *Noordin Sahib* (1) a similar question appears to have been raised. There a Mahomedan being the son of a deceased member of a firm brought a suit as his legal representative against the surviving partners, praying for an account of the partnership assets and for payment to him of the amount which might be found due to the share of the deceased. The plaintiff had neither letters of administration nor a succession certificate; and it was contended on behalf of the defendant that the plaintiff was not entitled to maintain his action. Mr. Justice Shephard, then Officiating Chief Justice, held that the plaintiff's claim being unliquidated was not a debt within the meaning of the Succession Certificate Act, 1889, section 4 (1), (*a*). Mr. Justice Benson differed from this view, and he held that the word "debt" must be understood as including not only debts due to the deceased at the time of his death, but also debts accruing due to his estate, or ascertained to be due to his estate after his death up to the date on which the inclusion of the debt in the certificate is applied for just as the amount of a debt includes interest due thereon up to that day. There being this difference of opinion, the case was referred to Mr. Justice Subramania Ayyar, and that learned Judge relying upon the cases of *Johnson* v. *Diamond* (2) and *Penta Reddi* v. *Anki Reddi* (3) held that the claim could not rightly be regarded as a debt, and that it was an abuse of language to call such liability a debt. I entirely agree in this view of the law, and hold accordingly that the present suit being a suit for account is not a suit for recovery of debt within the meaning of section 4 of the Succession Certificate Act.

Appeal dismissed.

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32 C. 422.

[422] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Brett.

CHHEDI *v.* CHHEDAN.*

[13th January, 1905.]

Right of suit—Bengal Tenancy Act (VIII of 1885), ss. 69, 70 (5)—Order of Collector finality of.

Section 70 (5) of the Bengal Tenancy Act does not bar a suit by a tenant against a third party for recovery of crops awarded to the latter by the Collector.

Jaga Singh v. *Chooa Singh* (4) referred to.

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* Appeals from Appellate Decrees, Nos. 2444 of 1901 and 134 to 142, of 1902, against the decrees of Gopi Nath Matty, Subordinate Judge of Patna, dated Aug. 30, 1901, reversing the decree of Narendra Krishna Dutt, Munsif of that district, dated Nov. 29, 1900.

(1) (1898) I. L. R. 22 Mad. 139.
(2) (1855) 11 Exch. 73.
(3) (1892) I. L. R. 22 Mad. 144.
(4) (1895) I. L. R. 22 Cal. 480.

1905 JAN. 13.

APPELLATE CIVIL.

32 C. 422.

SECOND APPEAL by the defendants Nos 2, 3 and 4.

The ten suits out of which these ten second appeals arose were brought against the same defendants for the recovery of possession of certain plots of land with mesne profits, and for the recovery of certain crops taken away by the defendants under the orders of the Collector. The material allegations in the plaints were that the lands in these suits formed the ancestral *kasht* of the respective plaintiffs held by them on *bhaoli batai* system by dividing the crops half and half between the landlord and the tenant ; that the defendant No. 1, who was the *thiccadar*, neglected to have the crops grown by the plaintiffs on the said lands in the year 1307 reaped and divided, and upon the latter presenting a joint petition before the Subdivisional Officer of Barh under section 69 of the Bengal Tenancy Act to have the crops reaped and divided, the defendant No. 1 with a view to dispossess the plaintiffs caused his relatives, the defendants 2 to 4 who had no concern or connection with the lands, to file a joint petition of objection claiming the lands as their own ; that the Subdivisional Officer by his order, dated the 1st March 1900, directed the crops to be made over to the defendants 2 to 4 ; the plaintiffs thereupon brought the present suits against the defendants 1 to 4 for recovery of possession of their respective lands on adjudication of their *kasht* right and for the recovery of the crops taken by the defendants.

[423] The defendants 2 to 4 defended the suits on the grounds, *inter alia*, that the plaintiffs were never in possession of the land within twelve years previous to the institution of the suit and that the plaintiffs had no title to the lands ; they also pleaded that the boundaries and areas of the lands were not correctly set out in the plaint.

The Munsif having dismissed the suits the plaintiffs appealed. The Subordinate Judge who heard the appeals found that the lands were held by the plaintiffs at *batai*, and that the evidence adduced by the defendants to prove their alleged tenancies was not reliable. He accordingly awarded to the plaintiffs possession and damages. The defendants 2 to 4 appealed to the High Court.

Moulvi *Syed Shamsool Huda*, for the appellants. The decision of the Subdivisional Officer of Barh is final so far as regards the right to the crops of the year 1307 : Bengal Tenancy Act, s. 70 (5). The suit in so far as it claims recovery of those crops is not maintainable.

Babu *Surendra Mohan Das*, for the respondents. Sections 69 and 70 of the Bengal Tenancy Act contemplate proceedings between landlord and tenant : *Jaga Singh* v. *Chooa Singh* (1). The plaintiffs and the defendants 2 to 4 both claim to be tenants.

RAMPINI AND BRETT, JJ. These ten appeals arise out of ten suits to recover possession of certain *kasht* lands and also for mesne profits. The facts are as follows : The tenants allege that they are the occupants of certain lands and that they hold these lands under the *bhaoli-batai* system. They state that they applied to the Collector for appraisement and division of the produce, that their landlord did not appear, but that three other persons came forward and claimed the crops as theirs ; and that the Collector decided that the crops belonged to the three persons already mentioned and allowed them to take the crops away.

The plaintiff's now bring this suit to establish their right to the land and to recover possession of the crops taken away by the defendants.

(1) (1895) I. L. R. 22 Cal. 480.

1905
JAN. 18.

APPELLATE CIVIL.

32 C. 422.

[424] The Subordinate Judge has given the plaintiffs a decree for the reliefs prayed for.

The defendants Nos. 2, 3 and 4 appeal to this Court and contend *first*, that the Subordinate Judge has not decided the question of the quantity of the land in dispute which was raised in the 6th issue; and *secondly*, that the order of the Collector as to the crops of 1307 was final and that the plaintiffs in this case cannot recover damages for the crops taken away by the defendants.

As to the first of these grounds, we may say that it has, we think, been decided by the Subordinate Judge that the quantity of land specified in the plaint is correct. The point does not seem to have been expressly raised or pressed before the Subordinate Judge; but at the conclusion of this judgment he says:—"The decree shall specify the quantity of land given in the plaints of each plaintiff and for which a decree is passed in his favour."

As for the second ground of appeal, the pleader for the appellant relies upon the provisions of sub-section (5) to section 70 of the Bengal Tenancy Act which lay down that the Collector may, if he thinks fit, refer any question in dispute between the parties to a Civil Court, but that order shall be final.

Now, we feel no doubt that this sub-section means that, between landlord and tenant, any matters which he may decide must be final. But however that may be, it certainly does not mean that as between tenants and third parties his decision shall be final. In support of this view we need only cite the case of *Jaga Singh* v. *Chooa Singh* (1) in which it has been laid down that sections 69 and 70 of the Bengal Tenancy Act refer to and contemplate proceedings between landlord and tenant and that when a plaintiff seeks relief, not against a tenant, but against a third party, the suit is not barred.

That being so, we see no reason to interefere with the lower Appellate Court. Appeal No. 2444 of 1901 and Appeals Nos. 134, 135, 138, 139, 140, 141 and 142 of 1902 are dismissed with costs. Appeals Nos. 136 and 137 of 1902 are dismissed without costs, as no one appears for the respondents in these two appeals.

Appeals dismissed.

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32 C. 425 (=8 C. W. N. 515.)

[425] CRIMINAL REVISION.

Before Mr. Justice Ameer Ali and Mr. Justice Handley.

THAKUR DAS SAR *v.* ADHAR CHANDRA MISSRI.*

[13th April, 1904.]

Defamation—Hindu widow—Complaint by brother—"Person aggrieved"—Jurisdiction—Criminal Procedure Code (Act V of 1898), s. 198.

Where the alleged offence was defamation imputing unchastity to a Hindu widow :—

***Held*, that her brother, with whom she was residing at the time, was a "person aggrieved" by such imputation within the terms of s. 198 of the Criminal Procedure Code, and it was competent to the Court to take cognizance of the offence upon his complaint.**

[Expl. 3 C. L. J. 38; Dist. 32 Cal. 1060=9 C. W. N. 847=2 C. L. J. 396.]

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* Criminal Revision No. 292 of 1904, against the order of Ram Sadan Bhattacharjee, Deputy Magistrate of Midnapore, dated February 9, 1904.

(1) (1895) I. L. R. 22 Cal. 480.