

1863, for rupees 12. As evidence of the purchase he puts in a transfer endorsed upon the patta by the defendant's father. The lower Appellate Court, reversing the decision of the Moonsiff of Sibsagar, has given the plaintiff a decree, relying upon the endorsement as proving that the defendant's father transferred the patta to the plaintiff.

The objection taken before us is that this endorsement has been rejected by the first Court, upon the ground that it was not stamped; and as such, it was improperly admitted in evidence by the lower Appellate Court. Baboo Abhaya Charan Bose, the appellant's vakeel, refers us to section 14 of Act X, of 1862, by which it is provided that no deed, for which any duty shall be payable under section 2 of this Act, shall be received as creating or transferring any right, or as evidence in any civil proceeding in a Court of Justice, unless such deed, instrument or writing shall bear a stamp of a value not less than that indicated to be proper for it by the schedule annexed to the Act. Under the 23rd clause of Schedule A, a conveyance, or instrument of any description whatever, executed for the sale or transfer, for a consideration, of any land or other property, moveable or immoveable, or of any right or interest in any land, when the purchase-money therein expressed shall not exceed rupees 100, shall bear a stamp of one rupee. The plaintiff's case is that this endorsement on the patta was an instrument of transfer, for a money-consideration of the land to which the patta relates, and therefore, according to the plaintiff's own case, it required a stamp of one rupee. We think the objection taken by the appellant's vakeel is well founded. The instrument in question is not admissible in evidence; and as the rest of the evidence is not consistent with the defendant's case, which is, that this property came into his hand as khurdua, *i. e.*, executor, manager, or trustee of the defendant's father, we reverse the decision of the lower Appellate Court, and dismiss the suit with costs.

1869
TETAI ABOM
v.
GAGAI GURA
CHAWA.

Before Mr. Justice Loch and Mr. Justice Mitter.

NARAKANT MAZUMDAR AND ANOTHER (DEFENDANTS) v. RAJA
BARADAKANT ROY BAHADUR (PLAINTIFF.)*

1869
April 23.

Act X. of 1859—Justice—Declaratory Decree.

The plaintiff filed a suit, for rent, at an enhanced rate, under Act X. of 1859. The Court of first instance dismissed the case, on the ground that the defendants had shown that the tenure was not liable to enhancement. On appeal to the Judge, the plaintiff's suit was dismissed on the ground that he had not proved service of notice, but a declaratory decree was given that the tenure was liable to enhancement.

Held, that the Judge should simply have dismissed the plaintiff's suit. Act X of 1859 gives him no power to make rent a declaratory decree.

Baboo Ramanath Bose for appellants.

*Special Appeal, No 2691 of 1868, from a decree of the Officiating Additional Judge of Zilla Jessore, dated the 16th June 1868, affirming a decree of the Deputy Collector of that district, dated the 30th April 1867.

1869

ANAKANT
MAZUMDAR
v.
RAJA BARA-
DAKANT ROY
BAHADUR

Baboo *Abhya Charan Bose* and *Debendra Chandra Ghose* for respondent.

THE judgment of the Court was delivered by

MITTEE, J.—This was a suit for arrears of rent at an enhanced rate. The Court of first instance dismissed it upon the ground that the defendant had shown, by satisfactory evidence, that the tenure in question was not liable to enhancement. On appeal, the Judge has found that service of notice, under section 13, Act X of 1859, has not been proved. He has further found that the defendant is unable to make out a title to exemption from enhancement. Upon these findings the Judge has dismissed the suit of the plaintiff for arrears of rent at an enhanced rate, but he has passed, a decree in his favor, declaring that the defendant's tenure is liable to enhancement.

We think the Judge had no right to make such a declaratory decree; the plaintiff having failed to prove service of notice, the suit, which was one simply for arrears of rent at an enhanced rate, ought to have been dismissed, and the Judge ought not to have proceeded further, in order to determine and to declare that the defendant's tenure is liable to enhancement. There is no provision whatever in Act X of 1859, which gives jurisdiction to the Revenue Courts to make such a declaratory decree.

The Judge has relied upon a decision of a Full Bench of this Court, in *Goomani Kazi v. Harrihar Mookerjee* (1). But it appears that that suit was instituted before Act X. came into operation; and the Civil Court, in which it was brought, being a Court expressly authorized by the provision of section 15 of the Code of Civil Procedure, to make a declaratory decree, it was held by the Full Bench that, although a plaintiff might not succeed in recovering any arrears of rent, at an enhanced rate, in consequence of his failure to prove service of notice, it was still competent to the Court to enter into the question, whether the defendant's tenure was liable to enhancement of rent, or not, and to pass a decree in favor of the plaintiff, declaring that it was, if the evidence justified such a conclusion. We do not think that the present case can be governed by the Full Bench decision. It is quite clear that the jurisdiction of the Revenue Courts, under Act X. of 1859, is a limited one; (and there being nothing in the provisions of the said Act authorizing) those Courts to make a declaratory decree, the present decree passed by the Judge declaring that the defendant's tenure is liable to enhancement, is null and void for want of jurisdiction. We, therefore, set aside the decision of the Judge, and dismiss the plaintiff's suit with costs of all the Courts.

(1) Case No. 2163 of 1862; June 1st, 1863.