

Before Mr. Justice Norman and Mr. Justice E. Jackson.

RANGLAL SAHU AND ANOTHER (TWO OF THE DEFENDANTS) v.
SIALI DHAR DAS (PLAINTIFF)*

1869
April 2.

Measurement—Lakhiraj—Act VI (B. C.) of 1862.

A zemindar is not entitled to measure the lands of a lakhirajdar holding a rent free tenure within the limits of his estate,

Baboo Debendra Narayn Bose for appellants.

Mr. C. Gregory for respondent.

THE facts are set forth in the judgment following.

NORMAN, J.—This is a suit brought under section 9 of Act VI (B. C.) of 1862, by which the plaintiff made an application to the Collector, praying him to allow the measurement of certain lakhiraj land, and to enjoin the attendance of the special appellant, Ranglal Sahu and others. It appears that the plaintiff purchased an estate, No. 866 in the Towji Register, situated in Mauza Jairampore, Pergunna Sripore, at a sale for arrears of rent. The defendants held 82 bigas of land rent-free, and have obtained a decree declaring their right to hold the lands as lakhiraj.

The first Court made an order that the defendants "should be present and get the disputed land measured by the plaintiff." That decision was affirmed by the Judge. He says, "that the plaintiff has a right to measure the land "appertaining to 866 of the towji, and if the plaintiff measures, takes possession, and assesses any land which may have been decreed to the appellants by the Civil Court, the appellants have their remedy; but the plaintiff "is not debarred from measuring whatever lands may still belong and pertain "to No. 866 in the Collector's Towji."

We are of opinion that the decisions of the lower Courts are erroneous and must be reversed.

In order to determine whether the appellant has a right to measure the lands of the lakhirajdar, before proceeding to consider the language of that section, it is necessary to observe that no man has any natural right to go upon land, which is the exclusive property of another, or to measure it without his permission. If such a right exists in any case, it is one which must be created by some Legislative enactment. Can we find words creating such a right in section 9? We think not. Section 9 says, "every proprietor of an estate or tenure or other person in receipt of the rents of an estate or tenure, has a right of making a general survey and measurement of the lands comprised in such estate or tenure or any part thereof, unless restrained from doing so by express engagement with the occupants of the lands." Can

* Special Appeal, No. 2450 of 1868, from a decree of the Judge of Purneah, dated the 26th June 1868, affirming a decree of the Deputy Collector of that district, dated the 25th of March 1868.

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it be said that according to the common understanding of men, if a person occupies lakhiraj or rent-free land adjacent to another's estate, but not shewn to be dependent on it, or in any way connected with it, that the lakhiraj lands are comprised in the estate? In the present case, the lands in Towji 866 are stated to be resumed lakhiraj mehal, in which the 82 bigas of land now in question were supposed to be included. The defendants have since, by a regular suit, established their title as lakhirajdars. The result is that they are holding an estate wholly distinct from, and unconnected with, the lands held by the plaintiff under the settlement of Towji No. 866.

It appears to us that in no sense can the defendant's lands be said to be comprised within that settled estate. Reading section 9, in order to see what are the powers of the Collectors, an additional argument presents itself in support of the view we take. The Collector, if the case so requires, is to pass a decision enjoining or excusing the attendance of undertenants or ryots, not of all persons occupying land within the ambit of the estate. Under such circumstances, we reverse the decision of the lower Courts, with costs in all the Courts, and interests.

Before Mr. Justice Kemp and Mr. Justice Glover.

CHARLES MACDONALD (ONE OF THE DEFENDANTS), v. RAJARAM ROY AND OTHERS (PLAINTIFFS).*

1869
 April 15.

Jurisdiction of Civil Courts and Revenue Courts—Suit to recover Possession of Land.

In a suit in the Civil Court, to recover possession of lands, which, the plaintiff alleged, he has leased to the defendant or manager of an indigo factory, and also of other lands over which he had given a zuripeshgi lease, *Held*, that the suit was rightly brought in the Civil Court, and that the Revenue Court had no jurisdiction. *Held* also that, as the defendant had made no objection to the manner in which plaintiff had calculated damages in the Courts below, the question could not be gone into in special appeal.

Mr. R. T. Allan for appellant.

Baboo Chandra Madhab Ghose and Bamesh Chandra Mitter for respondents

THE facts of this case sufficiently appear in the judgment of

GLOVER, J.—The plaintiff in this suit is a co-sharer in a certain manza in Zilla Tirhoot, and his suit is to recover possession of 72 bigas, 1 kata, 3 dhooors of land from the defendants in this wise:—The allegation of the plaintiff is that, in the year 1269, he leased his share of the estate to the defendant, the manager of an indigo factory, and along with that share likewise leased to him certain zerayat lands, which he cultivated himself within the

* Special Appeal, No. 3251 of 1868, from a decree of the Judge of Tirhoot, dated the 9th June 1868, reversing a decree of the Principal Sudder Ameen of that district, dated the 19th December 1867.