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deposing to the plaintiffs' possession as lakhirajdars might be sufficient evidence of their lakhiraj title irrespective of the documentary evidence produced in the case; but looking to the judgment of the lower Appellate Court as given above in full, it is impossible to say that the lower Appellate Court has based its decision upon the oral testimony only. On the contrary, a reasonable interpretation of the judgment of the lower Appellate Court taken as a whole, must lead to the conclusion that it was the strength which the lower Appellate Court considered the documents gave to the plaintiffs' case, which, taken together with the oral testimony, induced the lower Appellate Court to give the plaintiffs a decree; but still as there is some oral testimony on the record in support of the plaintiffs' case, the plaintiffs have a right to obtain the benefit of the lower Appellate Court's judgment on that testimony.

The cases are therefore remanded to the lower Appellate Court to try whether on the oral testimony on the record the plaintiffs have proved their title, the declaration of which they sue for, either directly or by reason of any possession held for upwards of 12 years as lakhirajdars.

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June 21.

Before Mr. Justice Loch and Mr. Justice Mitter.

RADHA MOHAN NASKAR AND OTHERS (DEFENDANTS) *v.* JADU NATH DAS AND OTHERS (PLAINTIFFS).*

Act X. 1859. *ss.* 142 *and* 143—*Wrongful Distraint of Crops—Jurisdiction of Collector's Court.*

Certain sub-lessees sued in the Collector's Court the zemindar and others employed by him for the value of crops seized and carried away, under a certificate, as was alleged by the defendants, granted to them by the Collector, but which they failed to produce. The Collector gave plaintiff a decree, which was upheld by the Judge. The defendants appealed only on the point of jurisdiction.

Held, the suit was properly brought in the Collector's Court; that sections 142 and 143 of Act X. of 1859 applied to the case. Section 143 contemplates not only the case of a person who professes to follow the provisions of the law, though he has no

* Special Appeals, Nos. 2618, 2621, 2622, 2623 and 2624 of 1868, from the decrees of the Judge of the 24-Pergunnas, dated the 15th August 1868, modifying the decrees of the Deputy Collector of Diamond Harbour of that district, dated the 30th April 1868.

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power to distrain; but also the case of a person who, under colour of the Act, does distrain, but does not do so according to the provisions of the Act. Such persons are considered by that section as trespassers, and are liable to the penalty of trespass in addition to damages which may be awarded against them by the Revenue Court.

IN this matter there were five special appeals. The cases were precisely analogous both as regards their nature and the main facts of each case. The numbers of them are given below. The judgment of the High Court given in the principal case applies to all of them.

They related to different portions of land comprised in a tenure, which one Biswambhar Rai Chowdhry held on lease from the proprietor Ramlochan Sirkar. The tenure comprised bigas 359-7-8; of these lands Biswambhar Rai Chowdhry sublet bigas 331-10 to Jan Mahomed Haldar and Biswambhar Kyal, who sublet again 145 bigas to Rasik Lall Mookerjee; the whole 145 bigas were again sublet by Rasik Lall Mookerjee to four persons, *viz.*, Jadu Nath Das, Kalachand Sirdar, Tilak Chandra Lashkar, and Ram Chand Haldar, and were sub-divided by them, the two first holding severally one-half, and the two last holding the other half jointly.

The crops standing in these lands in Aghran 1273 were attached, and the plaintiffs in the various suits alleged that the defendants who, were the zemindar and others employed by him, carried off and appropriated the crops so distrained.

The defendants in the different suits did not deny that the crops had been removed, but they alleged that they were taken under a certificate granted by the Collector under Act X. of 1859; which they have failed to produce.

The Deputy Collector gave judgment in favour of the plaintiffs for the ascertained value of the crops seized, awarding full costs, although only a portion of the amount claimed in value of the property had been proved. The defendants then appealed to the Judge upon two points only: 1*st*, as to the jurisdiction of the Court to entertain the suit; contending that the suit should have been instituted in the Civil Court, because the plaintiffs and defendants did not stand to one another in the relation of

landlord and tenant, and nothing in Act X. of 1859 was applicable to the case ; and, *2ndly*, as to costs.

The lower Appellate Court refused to entertain the plea as to want of jurisdiction in the Collector's Court to hear the suit, that point not having been raised till a late stage in the case, after a remand for the propose of local enquiries, and not at all in the Court of first instance. As to costs he modified the decree of the Deputy Collector, and awarded proportionate costs on the amount decreed.

The defendants in the various suits then appealed to the High Court, urging identical grounds of appeal, which were as follows :

1. That questions affecting jurisdiction could be raised at any stage of the case, since decrees passed without jurisdiction could have no legal effect.

2 That the plaintiff's case as laid did not come within the purview of Act X of 1859, and consequently the decrees of the lower Court ought to be quashed as passed without jurisdiction.

Baboos *Bangsi Dhar Sen* and *Bhagabati Charan Ghose* for appellants.

Baboos *Chandra Madhab Ghose*, *Kali Mohan Das*, and *Romesh Chandra Mitter* for respondents.

LOCH, J.—We think that the objection taken in this appeal is of no real force. The claim was to recover the value of crops which had been distrained under colour of Act X. of 1859 and carried away by the defendants.

The first Court gave a decree for the plaintiff, and that order has been confirmed by the lower Appellate Court. Before the lower Appellate Court, the special appellant, defendant in this case, did not appeal on the facts, but on two grounds, *viz.* that the Revenue Court had not jurisdiction in this case ; and on the point of costs.

The lower Appellate Court held that the question of jurisdiction had been raised at so late a stage of the proceedings that it could not be enquired into. We think the Judge was wrong in refusing to dispose of the question. A special appeal

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has been preferred against his judgment, and though we think that the Judge should have disposed of the question, although advanced at so late a stage of the proceeding, we think the objection has not in itself any real weight. The case is one which must come either under section 142 or section 143, Act X. of 1859. Section 142 contemplates the case of persons having authority to distrain, but who distrain otherwise than according to the provisions of the Act. Section 143 contemplates the case of persons not empowered to distrain, but who under the colour of the Act do distrain.

It has been urged before us that section 143 contemplates the cares of those who, though they have not power to distrain, do so and proceed under the provisions of the Act; but does not embrace a case such as this, where persons not empowered to distrain do so under colour of the Act, but do not follow the provisions of the Act, *i. e.* where persons professing to distrain forcibly carry off crops to which they have no right.

We think this is a wrong view of the cases contemplated under section 143. It appears to us that that section not only contemplates the case of a person who professes to follow the provisions of the law, though he has no power to distrain; but also comprises the case of a person who under colour of the Act does distrain, but does not do so according to the provisions of the Act. Such persons are considered by that section as trespassers, and are liable to the penalty of trespass in addition to damages which may be awarded against them by the Revenue Court.

Under this view of the case we dismiss this appeal with costs.

This decision governs the analogous appeals, Nos. 2618 of 1868, 2621 of 1868, 2622 of 1868, and 2624 of 1868.

MITTER, J.—I concur.