Before Mr. Justice Kemp and Mr. Justice Glover.

1869 *April* 30.

SHAW KHAIRUDDIN AHMED AND OTHERS (PLAINTIFFS) *v.* SHEIKH ABDUL BAKI (DEFENDANT) *

Regulation XIX of 1814, *s.* 9—*Act X. of* 1859, *s.* 13—*Lands appurtenant to a Dwelling-house—Enhancement of Rent.*

See also 12 B. L. R. 197.

The defendant had been declared entitled under section 9, Reg. XIX of 1814, to hold certain lands as attached to his dwelling-house at an equitable rent payable to the landlord. The landlord subsequently sued in the Revenue Court for enhancement of rent of these lands.

Held, that a suit for the rent of such lands could not be maintained in the Revenue Court.

Held also, per GLOVER, J.—That the rent so fixed on that land must be considered the fixed rent of the homestead of the house and ground, and not therefore, capable of enhancement.

THE plaintiffs sued, in the Court of the Assistant Collector of Zilla Tirhoot, to recover-rupees 69-1-9, principal and interest, arrears of rent for 1272, 1273 Fusli, according to a jummabandi and for 1274 according to a notice of enhancement, dated 28th March 1866, on certain khoodkasht lands cultivated by the defendant in two annas separate patta of Mauza Panu Saraisa. About nineteen years before the suit was brought, a division took plate of the village, of which both plaintiffs and defendant were proprietors. This land in suit being adjacent to the defendant's dwelling-house, he was declared, under section 9 (1), Regulation XIX. of 1814, at liberty to retain it on the payment of an equitable rent fixed then at rupees 3 per biga to the plaintiff in whose patta it was situated. The defendant admitted his liability for rent to the extent of rupees 45, the amount of rent due for five bigas at

* Special Appeal, No. 2973 of 1868, from a decree of the Additional Judge of Tirhoot, dated the 22nd July 1868, affirming a decree of the Assistant Collector of that district, dated the 1st October 1867.

(1) *Reg.* XIX. *of* 1814, *sec.* 9. If a dwelling house, belonging to one sharer, shall be situated in a mehal or village, which may be included in the state of another, the proprietor of such house shall be at liberty to retain it, with the Offices, buildings, and ground immediately attached to it, upon paying to the proprietor of the mehal or village an equitable rent for the ground; and the limits of the ground and the rent to be paid for it shall be particularised in the paper of partition.

1869

SHAW KHAIR-UDDIN AHMED v. SHEIKH ABDUL BAKI.

rupees 3 per biga for three years, but disputed his liability to enhancement.

The Assistant Collector considered the defendant was liable to enhancement, because what was an equitable rent many years ago, might not be an equitable rent now; but with reference to the case of *Bipro Dass Dey* v. *William Wollen* (1), he was of opinion that he had no jurisdiction. The defendant had not raised this point, and he gave the plaintiffs a decree for rupees 45, which the defendant admitted to be due.

The plaintiffs appealed to the Judge, who considered that the claim, being for ground rent, was entirely within the jurisdiction of the Collector's Court; but that the defendant was not liable to enhancement under section 13 of Act X. of 1859 on land which according to section 9 of Regulation XIX. of 1814, he could only have held as appurtenant to his dwelling-house. He, therefore, dismissed the plaintiffs' appeal.

The plaintiff then appealed to the High Court, urging

1. That the defendant's tenure was liable to enhancement under Act X. of 1859.

2. That what the Collector did, under Regulation XIX. of 1814, did not bar a suit for enhancement in the Revenue Courts, for that was only a fixing of the rents according to the rents then prevailing. The Collector's proceedings in the batwara were not judicial as in a suit, and therefore not final for the decision of the case.

3. That the suit was one for enhancement between landlord and tenant upon an admitted tenancy however created, and in regard to a matter cognizable by the Revenue Courts; therefore the suit was maintainable in the Revenue Courts.

Mr. *C. Gregory* for appellants.

Munshi *Mohammed Yusoff* for respondent.

GLOVER, J.—This was a suit for enhancement of rent after notice. Both plaintiff and defendant are co-cosharers in the same village. In 1848 a batwara was effected by which the defendant's dwelling-house was included in the plaintiffs' share of the village, and

(1) I. W. R., 223.

1869

SHAW KHAIR-UDDIN AHMED v. SHEIKH ABDUL BAKI.

the Collector, under the provisions of section 9, Regulation XIX. of 1814, directed that this, together with seven bigas of adjacent land, should be retained by the defendant on his paying the plaintiff a yearly rent of three rupees a biga, and this arrangement was duly entered in the batwara papers. The plaintiffs now seek to enhance this rate of three rupees a biga up to rupees 6 the usual rate, on this ground amongst others, that the Regulation only refers to land immediately adjacent to a house, and not to large fields, which are moreover cultivated by the defendant as a riot. The Assistant Collector thought that the plaintiff was entitled to enhance, but gave no decree, holding that the Revenue Courts had no jurisdiction. The Judge, on appeal, thought that the case was cognizable by the Collector, but that the rate fixed by the Collector on the batwara proceedings, was conclusive so far as the Revenue Courts were concerned. The point taken in special appeal is that the batwara proceeding is no bar to enhancement; that the lands then given by the Collector, did not come under the definition of section 9 of the batwara law; and that, if they did, the utmost the Collector did and could do, was to fix what was then an equitable rent, and that it did not follow that what was equitable then, was equitable now. For the special respondent it was contended that the Revenue Courts had no jurisdiction, as had been found by both the lower Courts, and that there was no need to go into the question as to whether the batwara order was a final one or no.

It appears to me that this is a valid objection, so far as regards the want of jurisdiction. I do not, however, understand the Additianal Judge to decide the case on this ground; for in one part of his decision, he says "the claim is entirely for ground-rent, and therefore within the cognizance of the Collector." I take his meaning to be that, although the Collector had jurisdiction, still the batwara proceeding must be assumed to have been correct and to be a sort of bar to the plaintiffs' claim to enhance. I admit, however, that there are some parts of his judgment, which seem to mean that, as the land in suit was immediately attached to the defendant's house, the rent fixed by the Collector, under section 9, Regulation XIX. of 1814, was in the nature of house rent, and not recoverable under Act X. of 1859.

1869

SHAW KHAIR-UDDIN AHMED v. SHEIKH ABDUL BAKI.

But whatever his real meaning may be, I take it that there is no jurisdiction in the Revenue Courts to try a case like this. There can be no doubt (indeed the batwara papers shew this very clearly) that the Collector gave the seven bigas of land to the defendant as an appanage to his dwelling-house, which appears to have comprised a considerable block of buildings, including a mosque. Whether or not the grant was excessive for the purpose, is a question with which we have nothing to do now. It is enough that the Collector was authorized, under the batwara law, to give such land as he thought proper to consider "attached" to the defendant's homestead as an appurtenance to that homestead, and it seems to me therefore, that the rent fixed on that land must be considered as the rent of the homestead of the house and grounds, as it would be called in England, and that such rent could not be the subject of a suit under Act X. of 1859: the proper forum would be the Civil Court. For these reasons I think that this special appeal should be dismissed with costs.

KEMP, J.—I concur in this judgment. It appears to me that the land is immediately attached to the house of the defendant, special respondent, "forming, as it were, one compound or set of premises." *Bipro Dass Dey* v. *William Wollen* (1). The suit ought to have been brought in the Civil Court.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

1869
May 1.

GIRISH CHANDRA DUTT (PETITIONER) v. BUZUL-UL-HUQ (OPPOSITE PARTY.)*

Act XVI. of 1864—Act XX. of 1866, ss. 3, 53, and 55—Registration—Bond.

A petition for payment of a bond, which had been specially registered under Act XVI. of 1864, was presented on the 3rd of April 1866. *Held*, that it must be considered as having been presented under section 53 of Act XX. of 1866, by virtue of the 3rd section of that Act, which repealed Act XVI. of 1864, consequently the decision of the Principal Sudder Ameen, to whom the petition was presented, was,

(1) 1 W. R., 223.

* Motion, No. 337 of 1869, from a decree of the Judge of Jessore, dated the 25th September 1867, reversing a decree of the Principal Sudder Ameen of that district, dated the 14th December 1866.