

Before Mr. Justice Kemp and Mr. Justice Glover.

SHEMSULOSMAN AND OTHERS (PLAINTIFFS) v. BANSHIDHAR DUTT
(DEFENDANT).

1871
April 13.

Act X of 1859, s. 17—Notice of Enhancement.

Baboo Kamalakant Sein for the appellants,

Baboo Nilmādhav Sein for the respondent.

THE facts of the case are sufficiently stated in the judgment of the Court, which was delivered by

GLOVER, J.— This was a suit for enhancement of rent after notice. The plaintiff alleged the the defendant was in possession of 22 bigas 5 katas of land, the pro- per rent of which according to the prevailing rates in the neighbourhood was 115 rupees 1 anna 6 gandas; that he only paid 28 rupees 3 annas 5 gandas as on a holding of 9 bigas 3 katas 10 gandas. He admitted that he had received payment of 31 rupees 15½ annas from the defendant, and sued for the balance. The defendant alleged that he held four distinct and separate holdings, one of which in respect whereof this suit was brought comprised 16 bigas 11 katas odd, on a rent of 17 rupees 8 annas, and was a mowras holding. It is not necessary to go into the question of the other holdings, as the case turns upon this first one alone. The first Court gave the plaintiff a decree finding the grounds of enhancement proved, and held that the mowrasi potta of the 5th of Aswin 1211 (September 19th, 1801) set up by the defendant was a forgery. The Judge on the first occasion remanded the case in order to have it distinctly set forth what were the grounds of enhancement; on which the lower Court considered that the plaintiff was entitled to increase the defendant's rent. On the case coming back to him after remand, the Judge dismissed the plaintiff's case altogether, holding that the notice was informal and insufficient, and that for the small excess which might be now in the defendant's possession over and above the 16 bigas odd katas held by him as mowrasi, no enhancement could be had in this suit, inas- much as that was not the plaintiff's case, and the Judge apparently did not think it right to allow him to make a new case in the appeal stage. He therefore dismissed the suit of the plaintiff altogether. The first ground taken in special appeal is that the notice was not defective. On this point, however, there appears to be no doubt; the notice sets forth that "you, the defendants, pay less than other ryots in the neighbourhood, and therefore you are to pay for the future at such and such rates." This clearly is not such a notice as is contemplated by section 17, Act X of 1859. The intention of the law was that a ryot who is suddenly called upon to pay an excess over his former rent should know

*Special Appeals, Nos. 2500 and 2501 of 1870, from the decrees of the Officiating Judge of Midnapore, dated the 5th August 1870, reversing the decrees of the Deputy Collector of that district, dated the 30th November 1869.

exactly the cause for which the landlord demands that excess. The section says that where it is shown that the rate of rent paid by a ryot is less than that paid by ryots having similar rights for the same description of land in the vicinity, the rent can be enhanced up to the rates paid by those ryots. In this case there is no such wording to be found in the notice. We think therefore, that the Judge was quite right in saying that this notice was insufficient and informal, and on this notice alone the plaintiff's suit for enhancement could have been dismissed.

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There are no grounds, therefore, on which this special appeal can be maintained, and it must be dismissed with costs.

Before Mr. Justice Kemp and Mr. Justice Glover.

GARBHU BHAGAT AND OTHERS (DEFENDANTS) v. RANGLAL SING AND OTHERS (PLAINTIFFS).*

1871
June 6.

Fictitious Sale—Right of a subsequent Mortgagee with Notice—Issue.

Munshi Mahomed Yusoff for the appellants.

Baboos Kali Krishna Sen and Lakhj Charan Bose for the respondents.

THE facts of the case are sufficiently stated in the judgment of the Court, which was delivered by

GLOVER, J.—The plaintiffs in this case sued for confirmation of possession in certain property purchased from their brother Lachmi Prasad on the 3rd of December 1868; the deed of sale was registered, it appears, on the next day,—viz., the 4th. The defendants were mortgagees from Lachmi Prasad on a deed dated the 16th of December 1868. They sued on their mortgage-bond, and got a decree, and, in execution thereof, attached the property which is now in dispute. Thereupon, the plaintiffs intervened, saying that the property was theirs by purchase from Lachmi Prasad by a purchase prior to the defendants' mortgage. The Court, before whom the application came, held that Lachmi Prasad had, notwithstanding the alleged sale, always remained in possession of the property, and that the sale was fictitious; it therefore ordered the sale to proceed. The plaintiffs now bring this suit for confirmation of possession, and to declare that the sale is a good sale, and that the property is not liable under the defendants' decree on the mortgage.

The defendant alleges as he did before, that the sale is fictitious; that no consideration passed; that the purchasers were never in possession; and that possession has remained all along with Lachmi Prasad. The Court of first

* Special Appeals, Nos. 9 and 27 of 1871, from the decrees of the Judge of Patna, dated the 27th October 1870, reversing the decrees of the Subordinate Judge of that district, dated the 12th July 1870.