

Before Mr. Justice Kemp and Mr. Justice Glover.

MAHARAJA DHIRAJ MAHTAB CHAND BAHADUR (PLAINTIFF) v.
SRI MATI DEBKUMARI DEBI (AND OTHERS (DEFENDANTS)).*

1871
May 2.

Interest.—Act VIII of 1869 (B. C.), s. 21—Rate of Interest.

Under Act VIII of 1869 (B. C.), section 21, it is discretionary with the Judge to give interest at 12 per cent.; he is not obliged to award interest to that extent.

Baboo *Ashutosh Mookerjee* for the appellant.

Baboo *Upendra Chandra Bose* for the respondents.

The judgment of the Court was delivered by

KEMP, J.—The only point raised in this case, in special appeal, is with reference to the question of whether the Judge was right in awarding interest at the rate 4 per cent. In special appeal, it is contended that, under section 21, Act VIII of 1869 (B. C.), the plaintiff is entitled to recover interest of the rate of 12 per cent. per annum. We think that there is no force whatever in this contention. Section 21 lays down that arrears of rent, unless otherwise provided for by a written agreement shall be liable to interest at 12 per cent. per annum. There is no written agreement in this case, and therefore, if the Judge thought right to award any interest, he was entitled in his discretion to award it to the extent of 12 per cent. per annum. See *Nobolath Dey v. Rajah Boradakarth Roy Bahadur* (1), *Kashee Nath Roy Chowdhry v. Mynuddeen Chowdhry* (2), and *Beckwith v. Kishto Jeebun Buckshee* (3).

The special appeal is dismissed with costs.

Before Mr. Justice E. Jackson and Mr. Justice Mookerjee.

1871
March 28. MUSSAMAT YUSAN KHATUN (PLAINTIFF) v. RAMNATH SEN (DEFENDANT)†

Act VIII of 1859, s. 230—Application—Regular Suit.

An application, under section 230 of Act VIII of 1859, should be registered and numbered in the register of suits as a plaint in a regular suit, and the Court is bound to determine, upon regular issues as in an ordinary suit, both the right and title, as well as the possession of the applicant.

Baboo *Debenra Narayan Bose* for the appellant.

Baboo *Malit Chandra Sen* for the respondent.

*Special Appeal, Nos. 2721 and 2719 of 1870, from a decree of the Judge of Hooghly, dated the 11th November 1870, affirming a decree of the Subordinate Judge of that district, dated the 30th August 1870.

†Special Appeal, No. 2220 of 1870, from a decree of the Subordinate Judge of Dacca, dated the 4th August 1870, affirming a decree of the Moonsiff of that district, dated the 13th December 1869.

The facts of this case, and the points raised in special appeal are fully stated in the judgment of the Court, which was delivered by

1871
 MUSSAMAT
 YUSAN KHAN
 TUN
 RAMNATHSEN.

MOOKERJEE, J.—In this case the plaintiff applied, under section 230, Act VIII of 1859, on the allegation that the defendant, Ram Nath Lakkar, who had recovered a decree against Golam Kadir Chowdhry, had in execution of that decree, dispossessed the plaintiff from his land. This application appears to have been numbered and registered in the register of suits, and issues were framed as in an ordinary civil suit for possession of land. At the time of the hearing of the case, however, it appears that the Moonsiff fixed the following new issue :—

“Whether the plaintiff was in *bonâ fide* possession of the disputed property ; if so, whether she can derive any benefit under section 230.” The Moonsiff tried this single issue, and, coming to the conclusion that the plaintiff was not in actual possession, dismissed the suit ; it is said “in the shape of non-suit.”

The plaintiff appealed, and the Appellate Court affirmed the Moonsiff's decision, being of opinion that the sole matter that the Courts have to see in an application under section 230, is whether the plaintiff was *bonâ fide* in possession of the property, and was possessed by the decree-holder defendant in execution of his decree.

Both the Courts referred to a decision of the 18th March 1869—*Sarada Mayi Chowdhraïn v. Nabin Chandra Roy Chowdhry* (1)—as guiding them in the disposal of this suit. But it appears to me that an application under section 230, when once registered and numbered as a suit, should be tried as an ordinary suit between the applicant as plaintiff and the decree-holder as defendant. According to the terms of section 230, “the Court shall proceed to investigate the matter in dispute in the same manner, and with the like powers, as if a suit for the property had been instituted by the appellant against the decree-holder.”

The subsequent Full Bench decision—*Radha Pyari Debi Chowdhraïn v. Nabin Chandra Chowdhry* (2)—which has been passed on a reference made by the same learned Judges who remanded the case on the 18th March 1869, has decided fully as to the manner in which suits under section 230 are to be dealt with by the Courts. I should think that, when a suit has been registered as a suit under section 230, the Courts are bound to investigate that suit as if it was an ordinary regular suit brought by the applicant in the Civil Court, and to try not only the question of possession, but also the question of title. Turning to section 231, it appears to me that the decision must be a final and complete decision, both for possession and title, for that section bars any fresh suit upon the same cause of action between the same party or parties, or those claiming under them.

I think, therefore, that the case ought to be sent back to the Court of first instance to be tried as an ordinary civil suit between the parties, in which the

(1) 2 B. L. R., A. C., 333.

(2) 5 B. L. R., F. B., 708.

1871
 MUSSAMAT
 YUSAN KHATUN
 v.
 RAMNATHSEN.

question of possession, as well as of title, should be enquired into, and the suit decided according to the result of that enquiry. Both parties should be allowed the fullest opportunity of adducing any evidence that they think fit to adduce in support of the issues fixed by the Court.
 Costs of this appeal will abide the final result.

Before, Mr. Justice Kemp and Mr. Justice Glover.

1871
 M^q S.

SRIMATI JADUMANI DASÍ (PLAINTIFF) v. SRIMATI FUDU BIBI AND OTHERS (DEFENDANTS).*

Power of the Court of appeal under section 337 of Act VIII of 1853, to reverse the whole of the decree of the Court below upon the appeal of one only of the parties against whom the decree was passed.

This was a suit to recover Rs. 58-14 from the defendant by sale of a piece of land measuring about one biga mortgaged to the plaintiff, on the ground that the defendants Dwarkanath and Jadunath had borrowed Rs. 16 from the plaintiff's late husband, and had executed a bond whereby the possession of the land in dispute was assigned to the plaintiff's husband; that after the death of her husband the plaintiff remained in possession and cultivated the same; that in Aghra 1276 (1865) Dwarkanath and Jadunath and the defendant Fudu Bibi, to whom they had sold the land in dispute, had cut and carried away the crops raised by the plaintiff; hence the suit to recover the amount secured by the bond, and damages for the crop cut and carried away by the defendant by sale of the mortgaged premises.

The defendants Dwarkanath and Jadunath stated that they had not executed the mortgage bond, and that they had sold the property in dispute to Fudu Bibi.

Fudu Bibi stated that she had purchased the property from the other defendants, and that the suit had been instituted by the plaintiff in collusion with the other defendants on a false and fraudulent bond.

The Moonsiff held that the bond was genuine, and passed a decree in favor of the plaintiff, ordering that the amount in suit be realized by sale of the mortgaged premises if the amount be not paid before such sale.

On appeal by Fudu Bibi (the defendants Dwarkanath and Jadunath did not appeal), the Subordinate Judge held that the bond was not proved; that the claim of the plaintiff was not established, and that the plaintiff was not entitled to enforce his alleged lien. That although the defendants Dwarkanath and Jadunath did not appeal, yet as the decree was prejudicial to the interests of Fudu Bibi, it should be set aside. He accordingly reversed the decree passed by the Moonsiff.

* Special Appeal, No. 1 of 1871, from a decree of the Subordinate Judge of Midnapore, dated the 22nd September 1870, reversing a decree of the 1st Moonsiff of that district, dated the 22nd March 1870.