plaintiff. The answer of the defendant was, first, that the relationship of landlord and tenant did not exist between the plaintiff and defendant in this suit, and, with the written statement of the defendant, a Bengali translation of a decision of this Court in the case of *Madhab Chandra Bhadory* v. *Mahima Chandra Mazumdar* (1) is put in. The second and last ground of the

(1) *Before Mr. Justice Loch and Mr. Justice Mitter.*

The 25th September 1869.

MADHAB CHANDRA BHADORY (ONE OF THE DEFENDANTS) *v.* MAHIMA CHANDRA MAZUMDAR (PLAINTIFF.)*

Baboo *Anand Gopal Palit* for the appellant.

Baboo *Narendra Nath Chatterjee* for the respondent.

MITTER, J.—The plaintiff in this case, having obtained a decree against the defendant for the resumption of certain invalid lakhiraj lands under the provisions of s. 30, Regulation II of 1819 brought the present suit for a kabuliat in respect of those lands in the Court of the Deputy Collector of Khoolneah. We are of opinion that the Deputy Collector had no jurisdiction to entertain this suit. It is admitted that the defendant has never attorned to the plaintiff, and it is also admitted that there has been no contract between the parties on the strength of which it can be held that the relation of landlord and tenant has been established between them. Under such circumstances, it is clear that a suit for a kabuliat would not lie in the Revenue Courts, cl. 1, s. 23, Act X of 1859, being applicable to cases between landlord and tenant only. It has been contended that the decree for resumption ought to be considered as sufficient to convert the defendant into a tenant of the plaintiff. But this contention is altogether erroneous. That decree merely declared that the lands in question were liable to be assessed with revenue, and it could not have possibly determined that the defendant was a tenant of the plaintiff in respect of those lands. The provisions of s. 9, Regulation XIX of 1793, appear to us to be decisive on this point. That section runs as follows:—"The rules in the preceding section are to be held applicable to the lands specified in s. 6, with this difference that the proprietor, farmer, dependent talookdar, or officer of Government to whom the revenue may be payable, shall ascertain the produce of the land, without subjecting the grantee to any expense, and submit the accounts of it to the Collector, who shall fix the revenue to be paid from the lands in perpetuity, reporting the amount for the confirmation of the Board of Revenue, who are empowered, in cases in which it shall appear to them proper, to increase or reduce the amount. If the proprietor shall agree to pay the revenue required of him, he and his heirs and successors shall hold the lands as a dependent talook subject to the payment of such fixed revenue for ever." It is clear from these provisions that the revenue assessable upon invalid lakhiraj lands below 100 bigas must be fixed by the Collector subject to the confirmation of the Board of Revenue, and it is only after the proprietor of the lakhiraj lands has agreed to pay the revenue thus fixed that he is to be considered as a dependant talookdar entitled to hold his talook from generation to generation subject to the payment of that revenue. There can be no doubt that the relation of landlord and tenant cannot come into existence until the laghirajdar has consented to pay the revenue fixed by the Collector, and it is therefore clear that the plaintiff ought to have adopted the course prescribed by the section above quoted, instead of bringing this suit for a kabuliat, under cl. 1, s. 23, Act X of 1859.

It has been argued that the provisions of s. 9, Regulation XIX of 1793, are not applicable to this case, inasmuch as the

* Special Appeal, No. 1094, of 1869, from a decree of the Additional Judge of Jessore, dated the 17th February 1869, reversing a decree of the Deputy Collector of Khoolneah, dated the 20th July 1867.

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SREMATI SAUDAMINI DEBI v. SARUP CHANDRA ROY.

written statement is that the lands in dispute are sandy and *patit* (waste), and that the rates claimed are, with reference to the quality and circumstances of the land, excessive. The first Court, the Moonsiff of Hurrepal, holds that the decision of the High Court in *Madhab Chandra Bhadory* v. *Mahima Chandra Mazumdar* (1) is in point, and that the relationship of landlord and tenant does not exist between the plaintiff and defendant. He therefore dismissed the plaintiff's suit. On appeal the Additional Judge of Hooghly, Mr. Wauchope, says that it has been ruled that a suit for a kabuliat will not lie against a ryot unless he has a right of occupancy; that the defendant in this case is the holder of resumed rent-free lands, and it is not pretended that he ever paid rent. The judgment of the lower Court was therefore affirmed, and the plaintiff's appeal dismissed. In special appeal it is contended that it having been declared by a competent Court that the lands in dispute are *mâl*, and that the defendant has no right to hold them as lakhiraj, a suit for a kabuliat fixing the rate of rent at which defendant is to hold will lie. The Courts below are in error in holding that such a suit will not lie.

Baboo Hem Chandra Banerjee, who appears for the special appellant, has called our attention to several decisions of the Court, *viz. Rani Shama Sundari Debi* v. *Sital Khan* (2), *Madhusudan Sagory* v. *Nipal Khan* (3), and *Rohini Nandan Gosain* v. *Ratneswar Kundu* (4). The only decision that at all militates against these decisions is the decision upon which the lower Courts have relied. That decision was passed by Loch and Mitter, JJ. Now one of these learned Judges in a decision subsequently passed by him, in *Rani Shama Sundari Debi* v. *Sital Khan* (2), in which he sat with the late Norman, J. thought proper, in recording a separate judgment to mention that the case then before the Court, that is to say, the case heard by Norman and Loch, JJ., was not on all fours with the judgment passed by Loch and Mitter, JJ., in *Madhab Chandra Bhadory* v. *Mahima Chandra Mazumdar* (1). The learned Judge says that he agrees with the special appellant's pleader that it is not on all fours with that judgment, and he goes on to say that in that case there could be no doubt from the form of the plaint that the plaintiff distinctly claimed the land as part of his talook, and that the defendant was holding under an invalid lakhiraj title, and he prayed to be

Court which passed the decree under s. 30, Regulation II of 1819, declared that the lands in question were alienated as lakhiraj subsequent to the 1st December 1790. But the answer to this argument is very plain. In the first place, we are bound to take the decree as it stands, and we have nothing to do with the reasons upon which the judgment which led to that decree was based. And in the next place, it is perfectly clear that, if the lands in question were really alienated as lakhiraj subsequent to the 1st December 1790. the Court which passed that decree had no jurisdiction to pass it under the provisions of s. 30, Regulation II of 1819.

Holding this view of the case, we are of opinion that the proceedings held by both the lower Courts ought to be set aside for want of jurisdiction, and the plaintiff's suit dismissed with costs in all the Courts.

(1) *Ante*, p. 83.
(2) *Post*, p. 85.
(3) *Post*, p. 87.
(4) *Post*, p. 89.

allowed to assess it as part of his talook, and obtained a decree to assess it as such, and it is therefore clear that it was not a case which came under s. 30, Regulation II of 1819, but was one which could be tried by the Civil Courts, or under s. 28 of Act X of 1859. Now, in the case before us, it is very clear that, although there is mention in the plaint in the resumption suits of s. 30, Regulation II of 1819, as well as of s. 10, Regulation XIX of 1793 (1), the prayer of the plaint and the object of the suit were to have it declared that these lands were the *mâl* lands of the plaintiff's zemindari, and that the allegation of the defendant that they were lakhiraj lands was false. The suit was in substance for a declaration that the lands were *mâl*; that the plaintiff, the zemindar, was entitled to assess these lands, and that the defendant's allegation that they were rent-free lands was false. The first Court found, and the Judge on appeal has confirmed that finding, that the defendant had wholly failed to prove that these lands whre held by him under a grant created before the 1st December 1790. The lands were therefore declared to be *mâl*, and liable to assessment. In the decision in *Rani Shama Sundari Debi* v. *Sital Khan* (2) passed by Norman and Loch, JJ., which was subsequent to the decision in *Madhab Chandra Bhadory* v. *Mahima Chandra Mazumdar* (3) above referred to, and in which Loch, J., took a part, it is

(1) See *Harihar Mukaphadhya* v. *Madhab Chandra Baboo*, *ante*, p. 566.

(2) *Before Mr. Justice Norman, Offg. Chief Justice, and Mr. Justice Loch. The 3rd May* 1871.

RANI SHAMA SUNDARI DEBI (PLAINTIFF) *v.* SITAL KHAN AND OTHERS (DEFENDANTS).*

Baboos *Mohini Mohan Roy* and *Srinath Das* for the appellant.

Baboo *Pitambar Chatterjee* for the respondents.

NORMAN, J.—This is a suit for assessment of rent and for a kabuliat in respect of certain lands formerly held as lakhiraj, and in respect of which a decree in a suit for resumption was passed in 1862 declaring them liable to be assessed to the payment of rent, and the plaintiff's right to assess such rent. The decree in that suit is in evidence. It recites the substance of the plaint, which stated that, as the defendant held the lands now in question as invalid lakhiraj, the plaintiff brought his suit to resume and assess the lands as appertaining to the talook belonging to the plaintiff. The lower Courts have dismissed the plaintiff's suit, holding that a decree in a resumption suit under Regulation II of 1819 cannot create the relation of landlord and tenant between the parties, and therefore that this suit will not lie. They refer to a decision of the High Court in the case of *Madhab Chandra Bhadory* v. *Mahima Chandra Mazumdar* (*a*). From that decision there has been an appeal to this Court.

In determining the question of the liability of the defendant, who continued in possession after the decree in the former suit, to pay rent to the plaintiff, after notice under s. 13 of Act X of 1859, we must see what is the nature of the right which the defendant has in the lands in question. Now, on referring to the decision in *Madhab Chandra Bhadory* v. *Mahima Chandra Mazumdar* (*a*), and regulation XIX of 1793, ss. 6 and 9, it appears very clearly that, where lands not exceeding 100 bigas, alienated by a grant made prior to 1st of December 1790, are resumed under Regulation II of 1819, they become liable to payment of revenue; and thereupon the revenue assessable on such lands belongs to

(3) *Ante*, p. 83.

* Special Appeal, No. 2549 of 1870, from a decree of the Judge of Moorshedabad, dated the 22nd September 1870, affirming a decree of the Moonsiff of that district, dated the 29th June 1870.

(*a*) *Ante*, p. 83.