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BIDYAMAYI DEBIA CHOWDHRAIN v. RAMLAL MISSER.

property for the period specified, and whether he made, or might have made, collection, during that period. If these issues be decided in favor of the plaintiff, then the defendant Ramlal Misser will have to account to the plaintiff for such collections. The defendant must pay the costs of this appeal.

BAYLEY, J.—I am of opinion that, unless we see clearly whether Ramlal Misser has or has not appropriated the mesne profits sought to be recovered in this case we cannot do justice in it. Ramlal's case is that he was dispossessed for the period for which mesne profits are sought. If he was, he perhaps could not be liable. But this is not gone into or proved one way or the other.

Again it is clear that the plaintiff would ordinarily be entitled to what she would have been able, ordinarily and reasonably, to collect and appropriate had she not been wrongfully dispossessed and deprived of the means of doing so.

Before Mr. Justice Kemp and Mr. Justice Glover.

SRIMATI SAUDAMINI DEBI AND ANOTHER (PLAINTIFFS) *v.* SARUP CHANDRA ROY AND OTHERS (DEFENDANTS).*

1872
March 12.

Suit for Kabuliat—Landlord and Tenant—Lakhiraj Land, Right of Zemindar to assess.

A decree of a Civil Court in a suit (the plaint of which referred to s. 30 of Regulation II of 1819, and s. 10 of Regulation XIX of 1793, (1) which declared the right of the zemindar to assess rent on land not proved to have been held under a grant prior to 1st December 1790, is sufficient to establish the relationship of landlord and tenant between the zemindar and the party against whom the right of assessment was declared.

Baboos *Rames Chandra Mitter* and *Hem Chandra Banerjee* for the appellants.

Baboo *Bacharam Mookerjee* for the respondents.

THE facts and the arguments in this case fully appear in the judgment of the Court which was delivered by

KEMP, J.—The plaintiff in this suit special appellant before us, sued the defendant, special respondent, for a kabuliat for three years, namely, from the year 1277 to 1279 (1870 to 1872), at a jumma of Rs. 66-12. The plaint sets forth that the plaintiff had obtained a decree in the Civil Court, declaring that the land of the defendant, which the defendant alleged to be rent free land, formed part of the plaintiff's *mâl* land; that the decree of the Court declared them liable to pay rent to the plaintiff; and that the defendant was entitled to keep these lands only on the footing that he paid rent to the

* Special Appeal, No. 808 of 1871, from a decree of the Additional Judge of Hooghly, dated the 22nd April 1871, affirming a decree of the Moonsiff of that district, dated the 20th February 1871.

(1) See *Harihar Mukhopadya* v. *Madab Chandra Babu*, ante p. 566.

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.