

1871
 DAYAL CHAND
 SAHOY
 v.
 NABIN
 CHANDRA
 ADMIKARI

District Judge, and in ordinary suits under 5000 rupees, there in an appeal on the merits from the Subordinate Judge to the District Judge, so that it is quite clear that the Legislature considered the District Judge to be an authority of a higher grade than the Subordinate Judge, although the jurisdiction of the latter in original suits is, under section 191, as wide as that of the District Judge ; and we must presume that, when Act VIII of 1869 was passed, and the words " District Judge " were specifically inserted in section 102, the Act constituting the several Civil Courts was in the contemplation of the Legislature. Another answer to the objection was given to the effect that, under section 372 of Act VIII of 1859, a special appeal lies from all orders where it has been specifically taken away ; and that as there is no provision specifically barring a special appeal from the order of a Subordinate Judge in rent suits under 100 rupees, it must be taken for granted that the right of appeal exists. We think that this answer is also of great weight, and we find that in the case of *Iswar Chandra Sen v. Bepin Behari Roy* (1) which was decided by Justices Loch and Mitter on the

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

The 2nd June and 4th July 1871.

ISWAR CHANDRA SEN (PLAINTIFF.)
 v. BEPIN BEHARI ROY (DEFEND-
 ANT).*

Baboo *Mohini Mohan Roy* for the appellant.

Baboo *Ramesh Chandra Mitter* for the respondent.

2nd June 1871.

The judgment of the Court was delivered by

Loch, J.—In this case the plaintiff sues to recover rent under a kabuliat given by the defendant, and the only question to be tried is, whether the defendant did or did not give that kabuliat. If it is found that he did so, the plaintiff will

be entitled to a decree. We do not think that this case has been properly tried. The lower Appellate Court has gone at great length into the question, whether a third party can be admitted in suits for rent under Act VIII of 1869, B. C., as an intervenor ; and having disposed of that point, it goes on to find that this kabuliat had been collusively obtained ; but it does not properly find on the evidence whether that was or was not the case, namely, whether or not the defendant had in reality executed the kabuliat.

We may observe that this is a case in which it is not necessary to admit the intervenor, his interest could not, under any circumstance, be injured by a decree in the present suit between the plaintiff and the defendant. We may further remark that the intervenor does not say that he is in receipt of rent from the defendant ; he merely alleges that he is the

* Special Appeal, No. 247 of 1871, from a decree of the Subordinate Judge of Rajshahye dated the 13th December 1870, affirming a decree of the Moonsiff of that district, dated the 9th August 1870.

4th July 1871, it was held that section 102, Act VIII of 1869 (B. C.), does not bar a special appeal from the order of a Subordinate Judge. On the whole, we are of opinion that the preliminary objection must be over ruled.

On the case itself the questions that arise are, firstly, whether, in consequence of the repeal of section 77 of Act X of 1859, the Civil Courts are bound to go fully into questions of title arising in rent cases brought before them, or are at liberty to restrict themselves to such question as the Revenue Courts were competent to try under that section ; secondly, whether the present defendant Nabip Chandra Adhikari was properly admitted as a party to the suit under section 73 of Act VIII of 1859, and, thirdly, whether the decision of the Subordinate Judge is not defective, inasmuch as he has omitted to notice material evidence on the record, which has been relied upon by the first Court.

It was argued by Baboo Hem Chandra Banerjee that the effect of the repeal of section 77 of Act X of 1859 is to make it incumbent on the Courts to try questions of title, whenever such questions may arise in the course of rent suits, and that they are not justified in restricting themselves to the points to which the attention of the Revenue Courts was limited by that section. There can be no doubt that, under Act VIII of 1869, (B. C.),

real proprietor and in possession of the jalkar of which the rent is claimed by the plaintiff.

We think, therefore, that the case must be remanded to the lower Appellate Court for trial, with reference to the above remarks. Costs to follow the result.

4th July 1871.

LOCH, J.—On this case again coming on this day for hearing, the only objection taken by the respondent is that, under the provisions of section 102, Act VIII of 1869, B. C., no special appeal in this case would lie to this Court (*reads*). In this case the judgment appealed against was passed by the Subordinate Judge, to whom the case had been transferred. We think that

the words " District Judge" in the above section can mean, and are only intended to mean, the Judge of the district, and not any Subordinate Judge to whom cases might be transferred for disposal. The Legislature intended that, where cases under one hundred rupees were tried, either originally or in appeal by the District Judge, and where no question of right or title or interest in land is adjudicated upon, the judgment of the District Judge in such cases should be final.

We think, therefore, that the judgment passed by us in this case on the 2nd June last must stand, and the case must be remanded for re-trial, in accordance with the directions contained in that judgment.

1871

DAYAL CHAND
SAHOY
v.
NABIN
CHANDRA
ADHIKARI.

1871
 DAYAL CHAND
 SAHOY
 v.
 NABIN
 CHANDRA
 ADHIKARI.

the Civil Courts have powers higher by far than those which were vested in the Revenue Courts by Act X of 1859; and that when properly called upon to do so, they will exercise these powers. I may refer to the case of *Haris Chandra Dutt v. Srimati Jagadamba Dasi* (1), recently disposed of by the

(1) *Before Mr. Justice Norman, Officialing Chief Justice, and Mr. Justice Ainslie.*

The 16th June 1871.

HARIS CHANDRA DUTT AND OTHERS
 (DEFENDANTS) v. SRIMATI JAGADAMBA DASIS AND OTHERS PLAINTIFFS.*

Mr. Money (with him Mr. R. T. Allan, and Baboos Ananda Prasad Banerjee, Kali Prasanna Dutt, Khetra Mohan Mookerjee, and Upendra Chandra Bose) for the appellants.

Baboos Kali Mohan Das and Mati Lal Mookerjee for the respondents.

The following judgments were delivered by.

NORMAN, J.—The plaintiff Srimati Jagadamba Dasi has brought this suit against Haris Chandra Dutt and others, patnidars, and Srimati Paddamani Dasi, her co-sharer in the zemindari within which the patni of the first mentioned defendants is situate.

The plaint alleges that the Dutt defendants hold fifteen mauzas and kismats in Perguana Noornuggur in patni at an annual rent of Rs. 9,066-10-8, according to a kabuliati executed by them in favor of the plaintiff's mother, Rasmani Dasi; that as the first half-yearly rent for 1271 (1864) was not paid, the patni was sold by auction under Regulation VIII of 1819; that on a suit being brought, this sale was set aside, and the Dutt defendants recovered possession with mesne profits. The plaintiff then brought a suit, under Act X of 1859, to recover her share, viz., one-half the rent mentioned in the kabuliati. The defendants

objected that Srimati Paddamani Dasi, the plaintiff's co-sharer in the zemindari, had not been joined as a co-plaintiff; that the plaintiff had come to no settlement with Paddamani in respect of her share; and that the defendants were ignorant of the extent of Paddamani's share. The suit was dismissed by the Collector, and the judgment of the Deputy Collector, dismissing the suit on that ground, was ultimately upheld by the High Court on the 3rd of July 1861.

The plaintiff then brought a fresh suit under Act X of 1859 against the defendants for her moiety of the rent making the co-sharer Srimati Paddamani Basi a co-defendant. The co-sharer Srimati Paddamani Dasi did not appear or put in any answer.

The defendants again objected that the question as to the defendant's share being still open, it could not be decided in the Collector's Court by making Paddamani a co-defendant.

This suit was also dismissed by the Deputy Collector, and the decree dismissing the suit was affirmed by the High Court on the 14th of April 1870, on the ground that the Collector's Court under Act X had no power to determine any question of right between the plaintiff and her co-sharer.

The present suit was brought in the Civil Court on the 31st of May 1870 for the plaintiff's share, viz., one-half of the rents from 1271 to 1276 (1864 to 1869.)

The Subordinate Judge made a decree in favor of the plaintiff for the amount of the plaintiff's share of the rent as claimed, Rs. 27,200, but disallowed the claim for interest.

* Regular Appeals, Nos. 11, 6, and 4 of 1871, from the decrees of the Second Subordinate Judge of 24 Perguanas, dated the 30th November 1870.