

1870

MAHARAJA
DHIRAJ MAHARAJA
HATABCHAND
BAHADUR
v.
MAKUND
BALLABH
BOSE.

The rent which is assessed does not issue only out of the land, but also out of the buildings; and, in fact, in the case of a bazar like this, it must issue principally out of the buildings.

One case which was quoted by the respondents' vakeel before us, in order to fortify his argument, is directly against him, namely, the decision in the case of *Tarimey Prasad Ghose v. The Bengal Indigo Co. (1)*. That was a case in which the land had been leased for certain indigo manufacturing purposes. Factories had subsequently been built upon the land, and a suit regarding rent had been brought, and it was attempted to be contended that, as factories were situated upon the land, the suit could not be brought in the Revenue Courts; but was held that, as the lease was not for the factory, but only for the land, the suit would lie in the Revenue Courts. Had, however, the lease been for the factory, as well as the land, the suit could not have been preferred in the Revenue Court. The decision is directly against the argument of the respondents' pleader. I quite concur in that decision, and I understand that that decision has been followed generally in this Court for some years past.

The rent which is demanded in this case not being solely for the land, but also for the buildings, it appears to me that the suit does not lie in the Revenue Court, and that the lower Courts are wrong in deciding to that effect. The decision of the lower Courts must be set aside, and the case must be remanded to the first Court for trial. The respondent must pay the costs of all the Courts.

1870
Dec. 7.

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

HARI MOHAN SIRKAR AND OTHERS (DEFENDANTS) v. R. SCOTT
MONCRIEFF (PLAINTIFF).*

Suit for Rent of Lands on which are Arhats, Ghâts and Bazars—jurisdiction of Revenue Court—Act X of 1850.

A suit for rent of lands where the rent comes from arhats, ghats, and bazars situated upon it, as well as from the land, will not lie in the Revenue Court.

Mr. R. E. Twidale for the appellants.

Mr. R. T. Allan and Baboo Bharwani Charan Dutt for the respondent.

The judgment of the Court was delivered by

JACKSON, J.—This is a suit for two months' rent of forty-six bigas of land, and of certain *arhats*, *ghats*, *hats*, and *bazars* thereon, in **Manza**

(1) 2 W. R., Act X R., 9.

* Special appeal No. 1341 of 1870; from a decree of the Additional Judge of Nuddea, dated the 9th May 1870, reversing a decree of the Deputy Collector of the district, dated the 5th April 1869.

Kennypore, near the town of Kooshtea. The lower Courts have come to opposite conclusions as regards the points which were raised before them, namely, as to whether the defendant was entitled to an abatement of rent or not. On special appeal in this Court, we are asked to set aside the decision of the lower Appellate Court, on the ground that the Revenue Court in which this case was instituted had no jurisdiction to receive the plaint. Under the precedents of this Court, the Revenue Courts have no jurisdiction to entertain suits like the one before us. The rent under the lease does not come from the land, but the rent comes from the *arhats* and from the *ghâts* and from the *bazars*, as well as from the land, which explains the fact that forty-six bigas are let out at the rent of Rs. 5,000 annually. The case seems to be on all fours with the cases of *Maharaja Dhiraj Mahatab Chand Bahadur v. Mahund Ballabh Bose* (1), *Kali Mohan Chatterjee v. Kali Krishna Roy Chowdhry* (2), *Kali Kishen Biswas v. Sreemutty Jankee* (3), *Shalgram v. Mussamat Kuberun* (4), and *Ranee Sharno Moyee v. Blumhardt* (5), in which it has been held that such suits do not form the subject of Act X of 1859; they must be brought in Civil Courts. However reluctant we may feel to remand this case still, following those precedents, we think we are obliged to set aside the decision of the Judge, and direct that the suit may be brought in the proper Court. The costs of the appeal, as far as it has gone, will be borne by the parties respectively, inasmuch as no such objection was raised in any of the lower Courts.

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 HARI MOHAN
 SIKKAR
 v.
 MONCHIEFF.

The decision of the Judge is set aside, and the plaintiff's suit is dismissed.

Before Mr. Justice Markby.

T. G. NEWTON AND OTHERS v. KURNEEDHONE AND OTHERS.

Civil Procedure—Act VIII of 1859, s. 111—Non-appearance of Defendant—
 Adjourned Hearing—Costs.

1872
 July 11.

This case had been placed on the list of undefended causes in consequence of the non-appearance of the defendant, and the hearing had been adjourned, at the instance of the plaintiff, to a subsequent day. On that day, upon the case being called in its order, Mr. Lowe appeared for the defendant.

Mr. Phillips, on behalf of the plaintiff, contended that, by s. 111, Act VIII of 1859, the defendant could not be heard in answer to the suit until he had shown good cause for his previous non-appearance. [MARKBY, J.—Does not that section apply only to cases in which the suit has been partly heard?] There was a part hearing on the day on which the adjournment was made. The record will show that the plaintiff appeared on that day, and that

(1) *Ante*, App., 13.

(2) 2 B. L. R., App., 39.

(3) 8 W. R., 250.

(4) 3 B. L. R., A. C., 61.

(5) 3 W. R., 552.