

poses are not liable to enhancement under Act X. And when we consider that a right of occupancy of land used for building purposes at a permanent rent may depend in some cases upon the terms of the original letting or upon equities arising out of the landlord's conduct, the suit for a higher or enhanced rent seems to be properly cognizable in the ordinary Civil Courts. I therefore think the decree should be confirmed.

1872
RANI DURGA
SUNDARI DASE
v.
BIBI UMDA-
TANISSA.

AINSLIE, J.—I concur.

BAYLEY, J.—I am of opinion that the suit for enhancement under the circumstances of this case will not lie under Act X. of 1859, and the current of decisions is to that effect.

Decree affirmed.

Before Mr. Justice E. Jackson and Mr. Justice Mitter.

BRAJANATH KUNDU CHOWDHRY AND OTHERS (PLAINTIFFS)
v. LOWTHER (DEFENDANT).*

1872
Febry. 9.

Act VIII of 1869 (B. C.)—Lands occupied with Buildings, Suit for Enhancement of Rent of—Jurisdiction.

A plaintiff brought a suit for enhancement of rent of lands occupied with buildings, under Act VIII of 1869 (B. C.)

Held, per E. JACKSON, J., that, though Act VIII of 1869 (B. C.) does not apply to lands used for building purposes, the Civil Court has jurisdiction to determine suits concerning the rent of such lands, and therefore had jurisdiction to entertain the present suit.

Held, per MITTER, J., that the word "land" in Act VIII of 1869 (B. C.) is used in its ordinary sense, quite irrespective of the purposes for which it is applied, and that a suit for enhancement of the rent of land on which a house is built, will lie under Act VIII of 1869 (B. C.)

THE plaintiffs, before the passing of Act VIII of 1869 (B. C.) served the defendant with a notice under Act X. of 1859, demanding enhanced rent for their tenure on all the grounds specified in s. 17 of the Act. After the service of this notice, Act VIII of 1869 (B. C.) came into force.

* Special Appeal, No. 633 of 1871, from a decree of the Additional Judge of Hooghly, dated the 6th March 1871, affirming a decree of the Moonsiff of that district, dated the 29th December 1870.

1872

BRAJANATH
KUNDU
CHOWDHRY
v.
LOWTHER.

The plaintiffs instituted the present suit in the Moonsiff's Court against the defendant claiming rent at the 'enhanced rate mentioned in the notice.

The defendant (*inter alia*) objected to the hearing of the suit on the ground that the land, the rent of which was sought to be enhanced, being land used for building purposes situated in the midst of a town, was not land within the meaning of either Act X of 1859, or Act VIII of 1869 (B. C.), and that therefore no suit for rent an account of it would lie under Act VIII of 1869 (B. C.) The Moonsiff dismissed the suit, holding that it would not lie under Act VIII of 1869 (B. C.) The plaintiffs appealed, and the Additional Judge, who heard the appeal, agreeing with the Moonsiff, confirmed his decision.

The plaintiffs preferred a special appeal to the High Court against the decision of the Additional Judge.

Baboo *Ashutosh Dhur* for the appellants.—Act VIII of 1869 (B. C.) makes no distinction between lands used for cultivation or other purposes—*Khalut Chunder Ghose v. Minto* (1), *Kali Kishen Biswas v. Sreemutty Jankee* (2), *Ranje Shurno Moyee v. Blumhardt* (3), *Kali Mohan Chatterjee v. Kali Krishna Roy Chowdhry* (4), *Kalias Chandra Sirkar v. Durgadas Tarajdar* (5), and *Naimudda Jowardar v. Monciiff* (6), which defined the meaning of the word "land" as used in Act X of 1859, do not apply to Act VIII of 1869 (B. C.) The meaning given to the word "land" as used in Act X of 1859, in *Khalut Chunder Ghose v. Minto* (1), which has been followed in the subsequent cases, is incorrect. In Act X of 1859, or Act VIII of 1869 (B. C.), there is no definition given of the word "land," nor is there anything throughout these Acts which would lead to the inference, that they only provide for the rent of lands used for cultivation.

The cases only decide that suits for rent of lands not used for cultivation will not lie in the Revenue Courts; the Civil Courts have jurisdiction. The fact of the suit being insti-

(1) 1 I. J., N. S., 426.

(4) 2 B. L. R., App., 39.

(2) 8 W. R., 250.

(5) 3 B. L. R., A. C., 234; in foot-note.

(3) 9 W. R., 552

(6) *Id.*, 283.

tuted under Act VIII of 1869 (B. C.) does not deprive the Civil Court of its jurisdiction.

1872

BRAJANATH
KUNDU-
CHOWDRY
v.
LOWTHER.

Mr. *C. Gregory* (with him *Baboo Tarak Nath Sen*) for the respondent. The cases cited show that Act X of 1859 does not apply to lands used for building purposes. Act VIII of 1869 (B. C.) merely transfers the trial of suits from the Revenue Courts to the Civil Courts, and it contains all the provisions of Act X of 1859. The notice in this case was served under Act X of 1859. The reasons which led the Judges in the cases cited to decide that the word "land" in Act X of 1859 referred to culturable lands, apply equally to Act VIII of 1869 (B. C.)

JACKSON, J.—We think that this case must be remanded to the Judge. As I understand the Judge's judgment, he has refused to try this case, because he states that it was instituted under Act VIII of 1869 (B. C.), and that Act VIII of 1869 (B. C.) is not applicable to lands used for building purposes. I understand that to be the whole of his judgment, and that he will not try the case, and does not go into the evidence in the case, because the suit is improperly brought under Act VIII of 1869 (B. C.) It seems to me that under s. 33, Act VIII of 1869 (B. C.), jurisdiction is given to the Civil Courts in all cases which were formerly brought under Act X of 1859; and, as regards all cases which did not fall within Act X of 1859, the jurisdiction of the Civil Courts still remain as it was before. The meaning of passing this law of 1869, or at all events one of the reasons of the Legislature for enacting that law was to put an end to a great extent to collision and to the difficulties which arose in ascertaining the jurisdiction between the two Courts, Revenue and Civil. This suit having been brought in the Civil Court, the question can be determined whether the plaintiff is entitled to enhance the defendant's rent or not. It is true, as argued by the pleader for the respondent, that a notice was served under Act X of 1859, but this seems to us to be immaterial. It was quite proper that a demand should be made in some way, and the notice, whether given in the form prescribed by Act X of 1859 or any other form is a sufficient demand for the enhanced rate. The plaintiff

1873

BRAJANATH
 KUNDU
 CHOWDHRY
 v.
 LOWTHER.

having brought his suit, it remains then for the Civil Court to decide whether he is entitled to what we demands' from the defendant. The Court will have to look into the grounds upon which the demand is made, whether they are sufficient grounds, and whether sufficient evidence have been given of the existence of those grounds, and to decide whether the plaintiff is entitled to enhance the defendant's rent or not. We set aside the decision of the Judge, and remand the case to be tried.

The costs of this appeal to be costs in the suit.

MITTER, J.—I am of the same opinion. I do not see any reason why this suit should not have been tried as a suit under Act VIII of 1869 (B. C.) The rent claimed is alleged to be due on account of land, and it makes no difference whether the lease was originally granted for building purposes, or whether the land is situated in part of a town. S. 23, Act X of 1859, distinctly says that all suits for arrears of rent due on account of land shall be brought in the Collectors Court and nowhere else ; and as the jurisdiction of the Collector has been transferred to the Civil Court, there seems to be no reason whatever why the suit should not be tried by that Court, when it is perfectly clear, that the plaintiff is suing for the rent of the land, and not for that of the buildings which admittedly belong to the defendant. I have already expressed my opinion on this point at some length in a case (1) which recently came before me, and I do not therefore wish to say anything further.

Decision set aside and case remanded.

(1) *Rani Durga Sundari Dasi v. Bibi Umdatannissa, ante, 101.*