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used for other purposes, but the decision, which was that of the Senior Judge, L. S. Jackson, J., was in accordance with the general law of limitation, and also that the plaintiff cannot obtain khas possession because they have been in possession twelve years.

Now, nothing seems to have turned upon the defence of general limitation. It is quite obvious upon this, that the defendants have put themselves out of Court, because they admit the tenure between themselves and the plaintiff.

The first Court found that the allegations generally of the plaintiff were true, and gave him a decree. The second Court finds, generally, that the allegations of the defendants are true,—that is to say, it finds that the defendants built the hut, that they held upon the terms they allege, and it finds that the allegation of the plaintiff that the land was demised for a specified term is untrue; and then the Court, observing that the defendants are "the ryots" of the plaintiff, dismissed the plaintiff's claim.

Now in special appeal before us, it has been contended by the plaintiff in the first place that the only right to remain in possession, which the defendants can claim, is under s. 6, Act X of 1859, and that s. 6 does not apply, because the tenants are persons to whom the land is sub-let by a ryot. I think that contention is bad in laws S. 6 does not exclude from the acquisition of the right of occupancy those persons who hold from ryots, but only those persons who hold from ryots themselves having no right of occupancy. Now, here the plaintiffs, assuming them to be properly described as ryots clearly by their own statement had more than a right of occupancy, for they claimed to have a transferable tenure. But, then, it is further objected by the plaintiff (still arguing that the only way in which the defendants can gain a right of occupancy is under Act X,) that

(2) *Before Mr. Justice Markby and Mr. Justice Glover.*

RAMDHAN KHAN (PLAINTIFF) *v.* HARADHAN PARAMANICK AND OTHERS (DEFENDANS).*

The 15th September 1869.

Baboos *Ashutas Chatterjee, Naba Kissen Mookerjee* and *Jadab Chandra Seal* for the appellant.

Baboos *Hem Chandra Banerjee* and *Amarnath Bose* for the respondents.

MARKBY, J.—It seems that in this case the plaintiff brought a suit to recover a piece of land, 14 cubits long and 7 cubits wide, in possession of the defendants. He says that he bought the land on the 25th Aswin 1259 (10th October 1853), from two persons, named Madhu and Narain. He says, that as this jummayi land paid rent to the zemindar, on the 26th Sraban 1259 (9th August 1853), he had his name registered, and obtained an amalnama; that he built a hut upon the land, and sublet it to his vendors, at a monthly rent of two annas, from Aghran 1261 to Aghran 1275 (16th November 1855 to 15th November 1868); that the hut was burnt down; that he was going to build another upon the land, when he was opposed by the defendants who are the heirs of Madhu and Narain.

The defendants, in their written statement, admit the purchase of the plaintiff from Madhu and Narain; and they do not dispute the tenure which the plaintiff holds, but they deny that the plaintiff built the hut. They say they built the hut, having taken the land which they hold for dwelling purposes at an annual rent of four annas, and, as a proposition of law, they say that the plaintiff's title is barred under the

* Special Appeal, No. 1501 of 1869, from a decree of the Subordinate Judge of Hooghly, dated the 26th May 1869, reversing a decree of the Moonsiff of that district, dated the 3rd April 1869.

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rulings I have already quoted. It seems to me, therefore, that we ought in this case to follow the long current of decisions Act X has no application to this case at all, because, by the defendants' own showing, the land was taken for dwelling purposes; and, according to the decisions of this Court, Act X does not apply to land taken under such circumstances. That contention appears to me to be good. In numerous cases decided by this Court relating to various provisions of Act X, this Court has come to the conclusion upon the general frame of the Act, that, though not restricted in express terms to any species of land, it was not intended to apply to any land except land of which the main object was cultivation, and with regard to this very section, the same conclusion has been come to in the case which was referred to, *Kali Kishen Biswas* v. *Sreemutee Jankee*(a). Phear, J., in delivering judgment says:—"The occupation intended to be protected by that section is occupation of land considered as the subject of agricultural and horticultural cultivation, and used for purposes incidental thereto, such as for the site of the homestead, the ryot or malli's dwelling-house, and so on. I do not think that it includes occupation the main object of which is the dwelling house itself, and where the cultivation of the soil, if any there be, is entirely subordinate to that." I think that decision is in accordance with the general view taken of this act, and for my part, I may say, I entirely concur with it.

But it has been contended by the pleader for the defendants, special respondents, that the plaintiff's suit ought to have been dismissed, because, whatever his cause of action may have been, if he properly stated it, he did not prove the cause of action laid in his plaint. Now, I think there is a little confusion as to what the plaintiff's cause of action really is. To my mind the cause of action in this plaint (and this plaint would have been perfectly good if it had been confined to that statement alone), was that the land belonged to the plaintiff, and that he had a right to the present possession of it, and that when he went to demand possession from the defendants they refused to give it to him. It is true that the plaintiff does go on and state circumstances which have now been finally decided to be untrue; and, no, doubt, the fact of his having done so may very well be raised against him in dealing with the evidence in the case. I do not think it follows, however, that because a plaintiff states circumstances in his plaint which are untrue, and which are not material allegations that is to say which are allegations which might be struck out of the plaint and yet the plaint remain a good one, and fails to prove those allegations, that, therefore, the suit must necessarily be decided against him. It stands admitted in this case that this land was the land of the plaintiff. It stands admitted that they only title of the defendants was in consequence of a grant made to them of the land in order that they might use it for dwelling purposes; and it seems to me that until the defendants can show that that grant was in its origin intended to be a permanent one, or that by occupation under it they had acquired a permanent right of occupancy, they must fail. I have already given my reasons for saying that they have made out no claim to a right of occupancy under Act X, because that Act has no application to this case; and they only other ground upon which it was possible that they could claim a right of occupancy, was, to my mind, stated in so vague a manner as to make it almost impossible to deal with it. It was stated that if a man (altogether independently of Act X of 1859, and even assuming that that Act would not apply) grants, we will say, a house to another for an indefinite

(a) 8 W. R. 250.

which held that the rent of land used for building purposes cannot be enhanced by a suit under Act X of 1859.

We were much pressed to refer this case for the decision of a Full Bench; but as there has been so far as I can discover,

term, the tenant, merely by occupation of it under that grant acquires, on equitable principles (for that is what it comes to), a right of occupancy. I know of no such principle of law. If authority were needed, it seems to me that such a proposition of law was expressly repudiated by the decision of the Privy Council in a case reported in 11 Moore's Indian Appeals, towards the end of the volume (*a*). I do not at all say that a grant which was originally wholly indefinite in its terms may not be made perpetual by the subsequent conduct of the parties: but that is a matter of fact, and no facts have been shown in this case of that kind, nor has the Court been asked to infer it. What we have been asked to hold, and what we cannot hold to give the defendants what they ask, is, that simply by occupying under a grant for no specified period and by paying rent under it, a tenant acquires a right of occupancy. I think that right is entirely confined to the special cases in which the Legislature has granted it. Therefore, I think that the grounds, upon which the lower Appellate Court based its judgment in this case, have been shown to be wrong in point of law, nor have the counter-objections in support of that judgment succeeded. The result to my mind is that the decree of the lower Appellate Court ought to be reversed, and that the plaintiff should have a decree for what the first Court gave him, that is to say, a decree for possession of the land. The defendants will have to pay the costs of this Court and of the lower Appellate Court.

GLOVER, J.—I am of the same opinion, and have nothing to add to the observations which have been made by Mr. Justice Markby.

(*a*) *Baboo Dhunput Sing* v. *Gooman Singh*, 11 Moo. I. A., 433, see p. 465.

(3) *Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.*

See also 13 B.L.R. 421.

In re BRAMAMAYIBEWA) PETITIONER.)

The 24th August 1870

Baboo *Kasikant Sein* for the Petitioner.

JACKSON, J.—This is an application to quash the decision of the Small Cause Court on the ground that the subject is one not within the jurisdiction of such Court.

The suit was one for arrears of rent upon a small piece of land at Kalighat, on part of which is a house. It is contended that this falls within the meaning of cl. 4, s. 23, Act X of 1859, and that it was, therefore, a claim in respect of which at the time of the passing of the Mofussil Small Cause Court Act (XI of 1865), a suit might be brought before a Revenue Court.

Another ground on which we are asked to interfere is that the suit was improperly framed, the plaintiff being one of several co-sharers.

As to the first ground, speaking for myself, I have frequently held that the provisions of Act X of 1859 do not apply to suits of that description, the land being occupied for the purposes of building, and not agriculturally or in the neighbourhood of lands occupied agriculturally. I have repeatedly decided cases in appeal upon that principle. Even if the point was one which admitted of doubt, whatever course I should be inclined to take if the case arose in special appeal or in appeal regularly, I do not think it is a point on which the decision of the Court below ought to be called in question by way of exercising the extraordinary powers of this Court, and quashing a judgment regularly arrived at. I do not think, therefore, that this rule ought to be granted.

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no conflict of decisions on the point, I do not think that we can do so.

The decision of the lower Appellate Court appears to me correct, and I would dismiss this special appeal with costs.

My attention has been drawn to the case of *Tariney Persad Ghose* v. *The Bengal Indigo* Co. (1), but with all respect for the opinion of my leraned colleague, I cannot think that this

As to the second point raised, it is a point of form which does not affect the decision on the merits.

MITTER, J.—I am of opinion that this suit was not cognizable by the Small Cause Court of Sealdah. The plaint shows clearly and distinctly that the subject of the case is a piece of land, and that the rent sued for is rent issuing out of that land, and payable on account and for the use of it. That there are certain buildings standing on the land does not, in my opinion, make any difference. Those buildings have been erected by the defendant, and it is quite clear from the plaint itself that they were not included in the lease, nor is the rent claimed on account thereof.

This being so, the question arises whether this suit could have been instituted in the Revenue Courts under the provisions of cl. 4, s. 23, Act X of 1859, if those Courts had been in existence on the date when the plaint was filed.

I am of opinion that the Revnue Courts alone could have entertained a suit of this description. The words of cl. 4. appear to me to be quite clear and positive on the point. That clause says : "All suits for arrears of rent due on account of land either khiraj i or lakhiraj, or on account of any rights of pasturage, forest-rights, fisheries, or the like," shall be brought in the Revenue Courts and in none other. It is impossible to say that this suit is not a suit for arrears of rent on account of land, and therefore the Small Cause Court of Sealdah had no jurisdiction to try it, the jurisdiction of Small Cause Courts in respect of such suits being barred by the express provisions of cl. 4, s. 6, Act XI of 1865.

I am aware that there are some decisions of this Court opposed to my view, but there are also several decisions the other way, and if the decision of this case had rested with me, I would have referred the question to a Full Bench of this Court for an authoritative ruling.

Whether the defendant in this case is a "ryot" within the meaning of that word as used in Act X of 1859, is a question upon which I do not wish to express any opinion, but it is quite clear that under the provisions of cl. 4, s. 23 of that Act, this suit being a suit for arrears of rent on account of land, could have been brought in the Revenue Courts only if those Courts had been in existence at the date when the plaint was filed I see nothing in the Act to justify any distinction between suits for arrears of rent on account of lands used for agricultural purposes and suits for arrears of rent on account of lands used for other purposes. It has been already held by the Privy Council that a suit for arrears of rent against a tenant who is not a cultivating ryot was cognizable by the Revenue Courts (*a*)

I concur in the view whic my learned colleague has taken on the second point raised in this application.

(*a*) *Baboo Dhunput Sing* v. *Gooman Sing*, 11 Moo. I, A.. 433.

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

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is a case in point, but if it be, there can be no doubt that a contrary ruling has been laid down in all the later decisions.

MITTER, J.— I am extremely sorry to differ from my learned colleague.

This was a suit for arrears of rent at enhanced rates, the arrears being alleged to be due on account of a piece of land situated in the Jessore Bazar. The lower Appellate Court being under the impression that the suit was one for house-rent, has dismissed it upon the ground that the Revenue Court in which it was instituted had no jurisdiction to try it. I am of opinion that the decision of the lower Appellate Court is erroneous in law, and ought therefore to be set aside. That the suit is not one for house-rent does not appear to be disputed. It is true that there is a building upon the land in question, but the building, it is admitted on both sides, is the property of the defendant; nor is it for any rent alleged to be due on account of that building that the suit was brought. The case therefore falls within the express provisions of cl. 4, s. 23, Act X of 1859, which was the law in force at the time of its institution, and which says: "All suits for arrears of rent due on account of land, 'khiraji or lakhiraj, shall be cognizable by the Collector of the 'land revenue, and shall not be cognizable by any other Court.' The present suit is, as I have explained above, a suit for arrears of rent due "on account of land." That the land is occupied by a building appears to me to be of no consequence whatever. It is, nevertheless, "land." exactly in the same sense, as it would have been if it had been cultivated with indigo or paddy: and as the rent claimed is alleged to have issued from the land, and not from the building which stands upon it, I am unable to see how it can be held that the suit was brought in a wrong Court, when the Legislature says in so many terms, that all suits for arrears of rent due on account of land shall be brought in the Collector's Court and in no other. No portion of the rent sued for is, or is even alleged to be, due on account of the building; for that building is, as I have already shown, the property of the defendant, and as such not subject to the payment of any rent to the plaintiff. Nor can the fact

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that the arrears sued for are claimed at enhanced rates affect the character of the suit in any way whatever. It is to all intents and purposes a suit for arrears of rent as it is in name; and as it is also a suit for arrears of rent "due on account of land," it seems to be beyond all question that it is capable of satisfying all the conditions required by cl. 4, s. 23, Act X of 1859. That clause, it should be borne in mind, applies to suits for arrears of rent not only against ryots, but against all classes of under-tenants. This point has been settled by the decision of the Privy Council in the case of *Baboo Dhunput Singh* v. *Gooman Singh* (1). That was a suit for arrears of rent at enhanced rates against a *quasi*-talookdar holding an intermediate position between the proprietor and the ryots, and an objection was taken that the Revenue Court in which it was brought had no jurisdiction to try it. Their Lordships, however, overruled the objection upon the ground that the clause above referred to "contains provisions for all classes of under tenants."

It has been argued that as the land is not used for agricultural or horticultural purposes, the suit was not cognizable by the Revenue Court. I confess that I am at a loss to find out any satisfactory reason to justify such a distinction. There is nothing whatever in the words of the Legislature to support it. On the contrary, as land must retain its character as land whether it is used for agricultural or for building purposes, the contention seems to be directly in the teeth of the plain and obvious meaning of those words. Why then are we to dismiss the suit on the ground of such a distinction? A suit for arrears of rent due on account of a piece of land, occupied by ryot's homestead, is clearly governed by cl. 4, s. 23, Act X of 1859, and there are many ryots in this country who do not hold any other lands than those occupied by their homesteads. A patnidar who holds an entire purgunnah, and never uses a single kata of the lands comprised in his patni, for agricultural or horticultural purposes, would have been liable to be sued, under that clause, if it had been still in force as law, and I see no reason, therefore, why the purpose for which the land is sued should

(1) 11 Doo. I. A., 433.

have anything to do with the jurisdiction conferred on the Revenue Courts by that clause. Whatever may be the true definition of the word "royt," as used in Act X of 1859, it is by no means necessary that he should be an actual cultivator. S. 6 says distinctly, that a royt who has "held" land for twelve years consecutively is entitled to a right of occupancy exactly in the same way as a royt who has "cultivated" land for the same period; and as cl. 4, s. 23, applies to all cases in which the subject-matter of the lease in land, I do not see the slightest reason why the defendant in this case should be permitted to object to the jurisdiction of the Revenue Court, even though he may not be a royt within the meaning of the Act. The land for which the rent is claimed is, it is true, situated within a bazar; and it is also true, that it is occupied by a building and not used for horticultural or agricultural purposes. But it is nevertheless land in every sense of the term, and as the suit is, therefore, a suit for arrears of rent due on account of land, it was instituted in the only Court in which it could have been instituted at the time. There in nothing whatever in the Act which says that the land should not be situated in a town or in the vicinity of a town; nor is there anything in it to give the slightest support to the contention that the land should be used for a particular purpose, or found in a particular condition, at the time when the suit is brought, before the Revenue Court can assume jurisdiction to try it. Suppose, for instance, that a royt cultivates his land with paddy for one year, and then errects a building upon it or allows it to remain uncultivated in the next year, a suit for arrears of rent due for the first year would certainly be governed by cl. 4, s. 23, Act X of 1859, and I see no reason whatever why the same clause should not apply to a suit brought for the arrears of the next year.

It has been said that there are several decisions of this Court by which it has been held that suits for arrears of rent due on account of lands not used for horticultural or agricultural purposes are not governed by Act X of 1859. I have carefully read those decisions, but with the greatest deference to the learned Judges by whom they were passed, I feel myself bound

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to say that they are based upon an erroneous construction of the law. I wish to add further that there are some decisions to the contrary effect—see *Tariney Persad Ghose* v. *The Bengal Indigo Co.* (1), *Gaetree Dabea* v. *Thakoor Doss* (2), *Shaikh Nasur Ali* v. *Saadut Ali* (3), *Watson* v: *Govind Chunder Mozoomdar* (4), *Matunginee Dassee* v. *Haradhun Doss* (5), and *Ram Churn Singh Khettree* v. *Meadhun Durjee* (6), so that there is no ground whatever for saying that the question has been set at rest by a long and uniform current of decisions. Indeed, the point was only a few days ago referred to a Full Bench in Special Appeal No. 31 of 1871, though I regret to say that the reference fell through in consequence of the Judges sitting on the Full Bench having come to the conclusion that the question did not arise in the particular case.

As, however, the view taken by me is in conflict with that taken by some of the learned Judge of this Court, I would reverse the decision of the lower Appellate Court subject to the opinion of a Full Bench.

The plaintiff appealed under cl. 15 of the Letters Patent against the decision of Glover, J.

Mr. *Montriou* (with him Baboo *Ashutosh Dhur*) for the appellant.

Mr. *Twidale* for the respondent.

Mr. *Montriou*.—The present suit is for rent of the land and not of the building on it, which is admitted by the plaintiff to be the defendant's property. In the present appeal the point raised is whether the Revenue Court had jurisdiction to entertain this suit. In *Mathurnath Kundu* v. *Campbell* (7), it was held that a suit for rent of land would lie in the Revenue Court, though that land had buildings on it. Here the land is one thing and the

(1) 2 W. R., Act X R., 9.
(2) W. R., Jan. to July 1864, Act X R., 78.
(3) *Ib.*, 102.
(4) W. R., Jan. to July 1864, Act X R., 64.
(5) 5 W. R., Act X R., 60.
(6) 8 W. R. 90.
(7) *Post*, 115.

house another. [AINSLIE, J.—The case you quoted is for rent. The present case is one for enhancement of rent, and the question before us if whether a suit for enhancement of rent of land covered with buildings would lie in the Revenue Court. COUCH, C. J.—The question is, whether enhancement applies to all kinds of land.] The case of *Mathuranath Kundu* v. *Campbell* (7)

(7) *Before Mr. Justice Norman, Officiating Chief Justice and Mr. Justice Loch.*

MATHURANATH KUNDU (DEFENDANT) *v.* W. CAMPBELL, MANAGER, ON BEHALF OF SCOTT MONCRIEFF (PLAINTIFF).*

The 29th April 1871.

Mr. *J.S. Rochfort* for the appellant.

Mr. *R. T. Allan* and Baboo *Bhowani Churn Dutt* for the respondent.

NORMAN, J.—This is a suit brought in the Collector's Court under Act X of 1859, for the rent of a very considerable tract of land described as a twelve-anna darpatni talook of Mauza Majumpur, and all the jotes, lately held tby Mr. Kenny in the sixteen-anna of the village two brick building in the shape of a half moon, each containing twenty apartments, with a brick-built godown standing on the said jotes, with khas, fallow, jalkur, cunkur, churs, &c., lakhiraj lands in Mauza Majumpur, a four-anna darijara of Mauza Majumpur, Mauza Moorareepore, and lakhiraj lands in Bahadoor Khalee. containing in all 1,330 bigas. The enumeration of the different tenures and ryots' holdings in the kabuliat, which was duly registered, is written in Bengali, and occupies twenty-five closely written sheets of the largest sized brief paper,

There are huts upon the land in question, and the brick-houses, included in the lease, are apparently of considerable value.

The Assistant Collector of Kooshtea, who tried the case, says:—"There are certain *pacca* houses on the land, and no doubt part of the rent stipulated is really on account of house-rent. But neither is the amount of house-rent nor the fact that anything is due on account of house-rent mentioned in the kabuliat. The houses are merely mentioned in a list of property, the mention of them is merely descriptive." There is also "a clause whereby the tenant is bound to keep the houses in good repair, and the right of letting them is made over to him specifically. The defendant objected before the Assistant Collector that a suit for rent could not be maintained in the Collector's Court. The objection was overruled by the Assistant Collector, and his decision has been affirmed by the Judge on appeal. The objection has now been renewed on special appeal before this Court. It seems to be supposed that there is a considerable conflict of decisions on the question before us; but I think that, when the cases are closely examined it will be found that such is not the case.

The preamable of Act X of 1859 recites that "it is expedient to reenact, with certain modifications, the provisions of the existing law relative to the rights of ryots with respect to the delivery of pottas and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same; to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears." Upon

*Special Appeal, No. 1953 of 1870, from a decree of the Additional Judge of Nuddea, dated the 15th June 1870, affirming a decree of the Assistant Collector of that district, dated the 26th June 1869.