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only apply to land which is at the time used for agricultural or horticultural purposes, and if land, originally leased out as an ordinary agricultural tenure, becomes afterwards covered with buildings in consequence of a town or bazar growing up round about it, I apprehend that, under the rulings of this Court, it loses its agricultural character, and cannot form the subject of an enhancement suit under the Rent Law.

The case of *Ram Churn Singh Khettree* v. *Meadhun Durjee* (1) is not contrary to this view. That was a suit for house-rent, and it was held that, where that rent included the ground rent, and the two could be clearly separated, a claim for the ground rent might be cognizable under Act X of 1859. But this opinion was given very doubtfully, the words used being "would perhaps be cognizable." The case of *Kali Kishen Biswas* v. *Sreemutee Jankee* (2) is very clear on the point. It rules that the occupation intended by Act X is occupation for agricultural or horticultural cultivation. The case of *Ranee Shurno Moyee* v. *Blumhardt* (3), which has been quoted by the special respondent's pleader, is not applicable, for there the land was leased expressly for building purposes, which is not shown to be the case in the suit now before us. But the case of *Kali Mehan Chatterjee* v. *Kali Krishna Roy Chowdhry* (4) is directly in point, and decides that Act X of 1859 does not apply to a suit for the enhancement of rent of land which is situated in the midst of lands used for building purposes, and on which the defendant's house is built; and *Khairudeen Ahmed* v. *Abdul Baki* (5) upholds a similar principle.

(1) 8 W. R., 90.
(2) 8 W. R., 250.
(3) 9 W. R., 553.
(4) 2 B. L. R., App., 39.

(5) *Before Mr. Justice Kemp and Mr. Justice Glover.*

KHAIRUDEEN AHMED AND OTHERS (PLAINTIFFS) v. ABDUL BAKI (DEFENDANT).*

The 30th April 1869.

Mr. C. *Gregory* for the appellants.

Moonshee *Mahomed Yusuff* for the respondent.

GLOVER, J.—This was a suit for enhancement of rent after notice.

Both the plaintiff and defendant are co-sharers in the same village. In 1848, a batwara was effected, by which the defendant's dwelling house was included in the plaintiff's share of the village, and the Collector, under the provisions of s. 9, Regulation XIX of 1814,

* Special Appeal, No. 2973 of 1868, from a decree of the Additional Judge of Tirhoot, dated the 22nd July 1868, affirming a decree of the Assistant Collector of that district, dated the 1st October 1867.

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directed that this, together with seven bigas of adjacent land, should be retained by the defendant on his paying the plaintiff a yearly rent of three rupees a biga, and this arrangement was duly entered in the batwara paper. The plaintiff now seeks to enhance this rate of three rupees a biga up to six rupees, the usual rate, on this ground (amongst others) that the Regulation only refers to land immediately adjacent to a house and not to large fields which are moreover cultivated by the defendant as a ryot. The Assistant Collector thought that the plaintiff was entitled to enhance but gave no decree, holding that the Revenue Courts had no jurisdiction. The Judge, on appeal, thought that the case was cognizable by the Collector, but that the rate fixed by the Collector on the batwara proceedings was conclusive so far as the Revenue Courts were concerned.

The point taken in special appeal is that the batwara proceeding is no bar to enhancement; that the lands then given by the Collector did not come under the definition of s. 9 of the batwara law; and that, if they did, the utmost the Collector did, and could do, was to fix what was then an equitable rent, and that it did not follow that what was equitable then was equitable now.

For the special respondent, it was contended, that the Revenue Courts had no jurisdiction as had been found by both the lower Courts, and that there was no need to go into the question as to whether the batwara order was a final one or no.

It appears to me that this is a valid objection, so far as regards the want of jurisdiction. I do not, however, understand the Additional Judge to decide the case on this ground, for in one part of his decision he says, "the claim is entirely for ground-rent, and therefore within the cognizance of the Collector." So does *Church* v. *Ramtanu Shaha* (1) as does also *Ramdhan Khan* v. *Haradhan Paramanick* (2). There is no doubt the I take his meaning to be that although the Collecter had jurisdiction, still the batwara proceeding must be assumed to have been correct, and to be a sort of bar to the plaintiff's claim to enhance. I admit, however, that there are some parts of his judgment which seem to mean that, as the land in suit was immediately attached to the defendant's house the rent fixed by the Collector, under s. 9, Regulation XIX of 1814, was in the nature of house-rent, and not recoverable under Act X of 1859. But, whatever his real meaning may be, I take it that there is no jurisdiction in the Revenue Courts to try a case like this. There can be no doubt (indeed the batwara papers show this very clearly) that the Collector gave the seven bigas of land to the defendant as an appendage to his dwelling-house which, appears to have comprised a considerable block of buildings, including a mosque. Whether or not the grant was excessive for the purpose is a question with which we have nothing to do now. It is enough that the Collector was authorized under the batwara law to give such land as he thought proper to consider "attached" to the defendant's homestead as an appurtenance to that homestead; and it seems to me, therefore, that the rent fixed on that land must be considered as the rent of the homestead—of the house and grounds as it would be called in England—and that such rent could not be the subject of a suit under Act X of 1859, the proper *forum* would be the Civil Court.

For these reasons, I think that this special appeal should be dismissed with costs.

KEMP, J.—I concur in this judgment. It appears to me that the land is imme-

(1) *Post*, 105.
(2) *Post*, 107.

case of *In re Bramamayi Bewa* (3), in which Mitter, J., held that there was nothing in Act X of 1859 to justify any distinction

diately attached to the house of the defendant, special respondent, "forming as it were one compound or set of premises"—*Bipro Doss Dey* v. *Wollen* (*a*). The suit ought to have been brought in the Civil Court.

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(1) *Before Mr. Justice L. S. Jackson and Mr. Justice Markby.*

C. CHURCH (DEFENDANT) *v.* RAMTANU SHAHA AND OTHERS (PLAINTIFFS).

The 28th May 1869.

Baboos *Kally Mohan Das* and *Hem Chunder Bannerjee* for the appellant.

Baboo *Chunder Madhab Ghose* for the respondents.

JACKSON, J.—This was a suit in the Collector's Court to obtain a kabuliat from the defendant for rent, at an enhanced rate, in respect of some four bigas fifteen katas of land occupied by him in the town of Sulkea. The enhancement was claimed upon grounds drawn up, not precisely in conformity with s. 17, but in words nearly resembling that section of Act X of 1859. The defendant claimed to hold this land under a mukarrari patta confirming a tenure of very ancient date, and granted by the vendors of the plaintiff. The Deputy Collector disallowed the plaintiff's claim for enhancement, but on appeal the Zillah Judge, finding that there was a defect of authority in respect of one of the co-sharers by whom the patta was alleged to have been granted, held the patta to be invalid, declared the defendant liable to enhancement and declared further, that he was liable to pay rent at a rate specified, being an enhanced rate, but not the rate stated in the plaint. The decree declared that "the appeal be decreed," but did not specifically declare that the defendant was to execute a kabuliat.

On special appeal against this decision, various grounds, were taken impugning the correctness of the Judge's conclusions; and after the argument had proceeded some length, a suggestion was thrown out that the whole decree must be inoperative, the suit being brought in a Court that had no jurisdiction to entertain it, inasmuch as the subject matter was rent of land situated within a town covered by buildings, and one to which, consequently, the provisions of Act X had no application whatever.

At first we entertained some doubt as to whether this objection, which had not been so much as thought of in either of the Courts below, ought to be allowed here. It appeared that both the parties had submitted to the jurisdiction of those Courts, and if there was no defect of jurisdiction on the face of the plaint and the decree, it might not be worth while to put the parties to the expense of a fresh litigation if the points of dispute could be finally settled by our decree. The argument was therefore allowed to proceed; but on going further into the case, it has become very manifest to me, and also, I think, to the pleaders on both sides, that the decree obtained by the plaintiff in the Court below, and any affirmance or modification of that decree which he might obtain from us, would be hereafter quite inoperative and infructuous. It seems quite clear that if, upon the declaration as to the rates of rent which he has obtained, he were now to sue this defendant for arrears of rent, at the rates so declared, before the Collector, he would be met by the plea that the Collector was not competent to try

(*a*) 1 W. R., 223.

(3) *Post*, 109.

* Special Appeal, No. 3225 of 1868 from a decree of the Additional Judge of Hoogly, dated the 1st May 1867, reversing a decree of the Deputy Collector of that district, dated the 12th March 1866.