

GLOVER, J.—I retain the opinion expressed by me in the case of *Rani Durga Sundari Dasi v. Bibi Umdatannissa* (1).

I therefore concur in dismissing the appeal with costs.

Appeal dismissed.

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MADAN MO-
HAN BISWAS
D.
STALKART.

Before Sir Richard Couch, Kt., Chief Justice, Mr. Justice Bayley, and Mr. Justice Ainslie.

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June 26.

RANI DURGA SUNDARI DASÍ (PLAINTIFF) v. BIBI UMDATAN-
NISSA (DEFENDANT).*

Suit for Enhancement of of Rent of Land covered with Buildings—Act X of 1859 s, 23, cl. 4—Jurisdiction of Revenue Court,

A suit for enhancement of rent of land covered with buildings will not lie in the Revenue Court under cl. 4, s. 23 of Act X of 1859, but it is cognizable only by a Civil Court.

THE plaintiff in this case instituted her suit under cl. 4, s. 23 of Act X of 1859, for arrears of rent at enhanced rates of land situated in the Jessore bazar. The enhancement was claimed on the ground that the defendant paid a lower rate of rent than the rate paid by similar ryots for similar lands surrounding the disputed land. There was no mention in the plaint of buildings being situated on the land, or that the claim included any rent on account of such buildings, nor was any reference made thereto in the defence disclosed in the defendant's written statement.

The Deputy Collector, among other issues, fixed the following:—
“The land being entirely occupied as building ground, will a suit for arrears of rent at an enhanced rate lie in the Revenue Court?”

On this issue the Deputy Collector observed:—“The question is, whether a suit under this section (2) will lie in the Revenue Court? It has been ruled, I believe, that all suits between landlord and tenant for rent of land can be heard in a Revenue Court, and there does not seem to be anything

* Appeal No. 1 of 1872 under Cl. 15 of the Letters Patent of 28th December 1865, from the decision of Glover, J. (differing from Mitter, J.), dated 22nd January 1872, in Special Appeal No. 728 of 1871, from a decree of the District Court of Jessore, dated 22nd March 1871.

(1) See next case.

(2) Cl. 4, s. 23 of Act X of 1859.

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in Act X of 1859 which would shut out suits of this nature however ill-adapted its provisions may be to their decision." The Deputy Collector gave the plaintiff a decree for rent at the rate of Rs. 64-2 per annum for the entire holding for the period in arrears, with interest at 12 per cent. per annum on the amount decreed.

Against this decision the defendant appealed to the District Judge, urging, among other grounds, that as the land for which rent was claimed at enhanced rates was not used for agricultural or horticultural purposes, no suit for rent in respect of it would lie in the Revenue Court.

The Judge, in dismissing the plaintiff's suit on the ground that the Revenue Court had no jurisdiction to try it, observed:—"I am of opinion that this suit should not have been brought under Act X of 1859. The High Court has on more than one occasion ruled that suits for rent of houses in a bazar cannot be entertained under the Act (X of 1859), and the ruling *Kali Mohan Chatterjee v. Kali Krishna Roy Chowdhry* (1) is, I think, conclusive on the point. I must, therefore, decree this appeal, and dismiss the suit with costs."

The plaintiff appealed to the High Court. The appeal was heard by Glover and Mitter, JJ.

GLOVER, J.—The question in this special appeal is, whether enhancement of rent can be had under Act X of 1859 on land situate in the middle of a town or bazar, and used entirely for building purposes? The Judge has held on the authority of *Kali Mohan Chatterjee v. Kali Krishna Roy Chowdhry* (1) that it cannot.

It is contended for the special appellant that the land was originally let as an ordinary ryoti tenure, and that the suit is for rent of the land and not for the rent of the houses. I do not know that this makes any difference, and no attempt has been made to distinguish between the two kinds of rent. I understand Act X of 1859 as referring to land in the state it is in when the suit is brought, and there have been many decisions of this Court to the effect that the provisions of the Act can

(1) 9 B. L. R., App., 39.

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. Sreemuttee 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 appellant.

Moonshee Mahomed Eusuff 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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