

The opinion of the learned Judges upon the question [proposed to them was delivered, as follows, by

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J. G. BAGRAM

v.  
J. P. WISE.

PEACOCK, C. J.—It is quite clear that the Court to which the decree was sent had jurisdiction over its own order striking off the case, whatever the striking off amounts to. As soon as a copy of the decree which is sent for execution to another Court is filed in the Court to which it is transmitted, it has the same effect as a decree of that Court; and by section 288 that Court is to proceed to execute it according to its own rules in the like cases. The order for striking off the application for execution of the decree did not strike the copy of the decree off the records of the Court to which it was sent for execution; and as long as it remains there, the Court to which it was sent may deal with it, and any application for execution of it as if it was a judgment of that Court. If in the present case, the decree had been a decree of the Backergunge Court, that Court would have had power to entertain the application.

*Before Sir Barnes Peacock, Kt., Chief Justice, Mr. Justice Bayley,  
Mr. Justice L. S. Jackson, and Mr. Justice Mitter.\**

RAJA NILMANI SING v ANNADAPRASAD MOOKERJEE.†

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*Suit for Abatement of Rent Act X of 1859, s. 23—Jurisdiction of Civil Court.*

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A. obtained from B. a putni lease, whereby it was agreed that A. should prepare a hastabud (rent-roll); that, if it should appear that there was any deficiency in the jumma stated in the potta, the correct jumma should be ascertained as therein provided; and that the rent should be made up to A. by B., and B. should return a proportionate amount of the consideration-money. A. sued B. for an abatement of rent, for a refund of rent paid in excess, and for a proportionate refund of the consideration-money. *Held*, the suit was not a suit for abatement of rent within section 23 of Act X of 1859, and the Civil Court had jurisdiction to try the different questions together in the same suit,

THREE analogous suits were brought by the plaintiff and others against the Raja of Pachet, for an abatement of the rent of their putni-holdings, for a refund of the rent paid in excess, and

\* Mr. Justice Mitter declined to express an opinion as he had been professionally engaged in these cases.

† Regular Appeals, Nos. 148 and 149, from a decision of the Principal Sudder Ameen of Magbhoom.

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also for a proportionate refund of the consideration-money, on the ground that the lessor, Raja Nilmani Sing, had wrongly stated the assets, and that he had covenanted in the potta, or by nama, granted by him, to make a reduction in the jumma and in the consideration paid for the putnis, if after enquiry and preparation of hastabud (rent-roll papers) by the lessees, it should be found that the estimated jummas were less than those actually paid by the ryots.

The plaintiff relied upon a lease, the terms of which were as follows :—

“ You, the putnidar, having taken possession of the putni, and beginning to collect, shall prepare a hastabud of each ryot paying rent; and if, on the hastabud being prepared, it shall appear that there is any deficiency in the aggregate jumma, Rupees 19,306-9-5, then, within six months, you will apply to me, the Raja, and there will be an amla appointed to ascertain the correct jumma and get the proper rent-roll checked. If any of the ryots fraudulently deny holding any lands, those lands are to be measured, and I will make up to you the rents, and whatever rent in this way shall be found wanting shall be deducted. I will give you a separate deed to that effect. I will also return you the proportionate amount of the consideration-money, and if it is found that the assets are greater, it is provided that I, the Raja, shall be at liberty to demand a separate kabuliat, and except in this way, in no other way shall the rent be raised.”

The suits were, in the first instance, dismissed by the Deputy Commissioner of Purulia, on the ground that the plaintiffs had not furnished the hastabud papers required by their contracts, and were, therefore, not entitled to ask for any abatement.

On appeal to the High Court, (Norman and Pundit, JJ.), all the suits were remanded on the 25th January 1865, with directions that an Ameen “ should be appointed and sent into the Mofussil to prepare a regular hastabud of the whole of the putni mehals.” In order to ascertain whether there was or was not a deficiency in the jummas, the local enquiry was made; and the Principal Sudder Ameen of Manbhoom, by whom the suits were tried after the remand, found for the plaintiffs upon the basis of the Ameen’s report.

Against that decision the defendant, the Raja, appealed to the High Court, on the ground that the suit being one for abatement of rent was not cognizable by a Civil Court, but only by the Collector, under Act X of 1859.

The Division Bench (LOCH AND GLOVER, JJ.) were of opinion that the suit was cognizable by the Civil Court, but a similar case having been brought to their notice, *Nilmani Sing Deo Bahadur v. Iswar Chandra Ghosal* (1), in which another Division Bench had ruled differently, they referred the following questions for the opinion of a Full Bench :

“ 1st.—Can a suit brought under the circumstances of this one, be called a suit for abatement cognizable under Act X of 1859 ?

“ 2nd.—If it be so, would not the Civil Court have jurisdiction to try it when mixed up with a claim to refund of consideration-money ?”

Mr. *Allan*, and Baboos *Anukul Chandra Mookerjee* and *Tarakanath Sen*, for Appellants.

Baboos *Annada Prasad Banerjee*, *Srinath Das*, and *Durgadas Dutt*, for respondents.

The opinions of the learned Judges upon the questions proposed to them, were delivered, as follows, by

PEACOCK, C. J.—The lease mentioned the amounts of rent to be paid, but it provided that the tenant should, within a certain period, ascertain what were the real assets of the property : that if they were found to be less than the amount of rent specified in the lease, the landlord would deduct the difference, and would refund a proportion of the consideration-money. The assets were found to be less. It appears to us that this suit is not for an abatement of rent, but for a declaration that, according to the terms of the lease, the rent really payable is less than the sum nominally inserted in it.

A suit for abatement of rent is a suit for reducing the amount

(1) 9 W. R. 92.

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which but for the abatement would be payable as rent. In this case, the amount mentioned in the lease was never, according to the terms of the lease, payable as rent. The amount which was inserted in the lease was subject to a condition that it was not to be the rent in a certain event. The suit is, therefore, not a suit for abatement of rent within the meaning of section 23 of Act X of 1859. This answers the first question.

The second question is, whether, if such a suit can be brought, the Civil Courts have jurisdiction to try it when it is mixed up with a claim for a refund of consideration-money.

It appears to us that the Civil Court had the power to try this question when it was mixed up with the other questions in the suit. It has been held in *Ramgopal Mazumdar v. F. J. Sanders* (1); *Ram Chand v. Chand Charan Das* (2); *Roy Udit Narayan Sing v. Ram Saran Roy* (3); *Makuju Noshya v. Dohur Mohamed* (4); *Bidhubadan Mookerjee v. Durga Mani Debi* (5); *Bhikari Panda v. Ajedhya Prasad* (6); *Mugni Roy v. Lala Khuni Lal* (7); *Sarbeswar Dey v. Fakir Mohamed Sirkar* (8); *Padma Mani Dasi v. Jhola Paly* (9); *Tara Chand Zurgur v. Loknath Dutt* (10), that a suit to recover the possession of land may be tried by the Civil Court when it is mixed up with a claim for mesne profits. It would be most inconvenient in the present case if the whole question could not be tried by the Civil Court. It is admitted that the Court has jurisdiction to enforce the refund of that which has been paid in excess; and if the Revenue Courts should refuse to abate the rent, the plaintiff would have again to sue in the Civil Court to have the excess refunded according to the terms of the lease.

(1) 1 W. R., 138.

(2) *Ib.*, 160.

(3) *Ib.*, 221.

(4) 2 W. R., 52.

(5) *Ib.*, 157.

(6) 3 W. R., 176.

(7) 6 W. R., (Act X Rul.,) 20.

(8) 7 W. R., 243.

(9) *Ib.*, 283.

(10) *Ib.*, 414.