

doing as would make them liable to pay damages. That decree was consequently an invalid decree, and the Lower Appellate Court was substantially right in reversing it. For these reasons we think that we ought not, in special appeal, to interfere with the decision which the Lower Appellate Court has passed.

We therefore dismiss this appeal with costs.

But we think it right to add, if it is necessary to do so, that this decree is without prejudice to any right of suit which the plaintiff may be advised he has against Bajah Singh on the cause of action here sued upon, inasmuch as, in our opinion, Bajah Singh was wrongly made a party to this suit by the act of the Court itself.

The 2nd December 1873.

Present :

The Hon'ble J. B. Phear and G. G. Morris,
Judges.

Rent-suit—Land for building purposes—Jurisdiction—Small Cause Court.

Reference to the High Court by the Judge of the Small Cause Court at Bhaugulpore, dated the 16th September 1873.

Gokul Chund Chatterjee, *Plaintiff,*

versus

Mosahroo Kandoo, *Defendant.*

A Small Cause Court has jurisdiction to entertain and determine a suit for the rent of land situated in a village in the interior of a district, and used partially for building purposes.

Case.—UNDER the provisions of section 22 of Act XI. of 1865, I have the honor to refer the above case for opinion to their Lordships the Hon'ble the Judges of the High Court.

The plaintiff sues to recover Rs. 5 from the defendant as rent for 8 cottahs of land, which he let to the defendant at a stipulated rent per annum to enable the latter to build a dwelling-house thereupon. This is an undefended case, the defendant not having appeared, although the summons is proved to have been duly served. The plaintiff, who has entered appearance, says that the defendant has built a few huts on a portion of the land, and on the remainder vegetables are grown which are sold by the defendant. The land in question is situated in a village in the interior of the district, and is not in a town. The point upon which I respectfully

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solicit the opinion of the Hon'ble High Court is one of jurisdiction. Is such a suit cognizable by the Small Cause Court or by the ordinary Civil Courts under the Rent Law?

The plaintiff contends that "a suit for rent of land used for building purposes is cognizable in the Court of Small Causes," and cites, in support of his statement, High Court ruling noted in the margin. Reading section 6 of Act XI. of 1865 with the ruling above quoted, I have some doubts as to the jurisdiction of the Court in cases of rent for lands situated in villages. The ruling quoted refers probably to rent for similar lands in towns.

The judgment of the High Court was delivered as follows by—

Phear, J.—We are of opinion, on the statement of the facts presented to us by the Judge of the Small Cause Court, that the case substantially falls within the ruling of this Court which is reported in the 19 Weekly Reporter, page 308, and that the Small Cause Court has jurisdiction to entertain and determine the suit.

The 4th December 1873.

Present :

The Hon'ble J. B. Phear and G. G. Morris,
Judges.

Landlord and Tenant—Onus Probandi.

Case No. 194 of 1873.

Special Appeal from a decision passed by the Officiating Judge of Patna, dated the 17th September 1872, reversing a decision of the Subordinate Judge of that District, dated the 11th May 1872.

Mohun Mahtoo (Defendant), *Appellant,*

versus

Meer Shumsool Hoda (Plaintiff), *Respondent.*

Mr. R. T. Allan and Baboo Bama Churn Banerjee for Appellant.

Moonshee Mahomed Yusuf for Respondent.

As long as the relationship which arises out of a lease subsists, the lessee (tenant) is bound to pay to the lessor (landlord) the rents reserved therein. A tenant, denying a landlord's claim to rent on the allegation that the relationship has terminated, is bound to prove his allegation.

Phear, J.—We are of opinion that the judgment of the Lower Appellate Court is