books; but that the defendants successfully opposed this application on the ground that Meherban Mahton, the first defendant, in whose name the property stands, executed in their favour a *shurakutnama*, which gave them the right to the property. This conduct on the part of the defendants constitutes a very good cause of action—exceedingly good ground why the plaintiffs should come into Court to vindicate their right to the property if they have the right.

It was next objected that the property was of a value much beyond the jurisdiction of the Moonsiff who tried the suit in the first instance, and that therefore the decrees of the Courts below were bad for want of jurisdiction. But the valuation which the plaintiffs put upon the plaint was within the limit of the Moonsiff's jurisdiction, and no issue was raised or asked for in either of the Courts below as to the value of the property.

It was pressed upon us that this Court will entertain the question of jurisdiction at any stage of the proceedings; and a case was cited to us from the 14 Weekly Reporter, p. 228, in which this Court had, on special appeal, after as many as five previous hearings, set aside all the decisions of the Courts below upon an objection to the jurisdiction which was made then for the first time. But in that case it seemed to the Judges, who heard the special appeal, upon the facts which the plaintiff himself set out in his plaint, that the value of the property was incontestibly beyond the limit of the Moonsiff's jurisdiction. In the present instance, we have nothing of this kind to go upon. It is true that there are statements in the plaint from which we may infer that the property, many years ago, was of a larger value than the present limit of the Moonsiff's jurisdiction, and the statements thus made in the plaint would be exceedingly good evidence bearing upon an issue of jurisdiction, if an issue upon that point had been raised. But it is impossible for us to say, upon these statements alone, that the value of the property must necessarily be taken to be, as against the plaintiffs, of a larger value than that for which a suit could be brought in the Moonsiff's Court. It would be necessary for us, before we could act upon this objection, to direct that an issue as to the value of the property should be framed and sent back to the first Court to be tried. But this is a course which we do not think it necessary or right to take at this stage of the proceedings.

The other objections which have been made on special appeal seem to be all directed to the value of the evidence, and to question the soundness of the judgment which the Lower Appellate Court has formed upon the evidence with regard to the facts of the case. Without expressing any opinion either way upon the value of these objections, or upon the merits of the case itself, it is enough for us to say that we think that they are not of such a nature as we can entertain on special appeal.

The appeal is, therefore, dismissed with costs.

The 28th April 1874.

Present:

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

Revenue Settlement—Enhancement of Rent.

Case No. 484 of 1873.

Special Appeal from a decision passed by the First Subordinate Judge of Bhaugulpore, dated the 5th February 1873, reversing a decision of the Moonsiff of Begoosurai, dated the 25th November 1872.

Roopun Roy and another (Defendants), *Appellants,*

versus

Purdeep Singh and others (Plaintiffs), *Respondents.*

Baboo Gopeenath Mookerjee for Appellants.

Baboo Gunesh Chunder Chunder for Respondents.

If a ryot has a right of occupancy, his rate of rent can only be enhanced in the mode prescribed by law; if he has not, his landlord can only claim arrears of rent on the ground of actual agreement, express or implied. Such claim cannot be made at an enhanced rate, simply because the landlord has settled with Government at a higher rate of revenue.

Phear, J.—It seems to us that the Subordinate Judge has committed error in his

decision. The plaintiff seeks to recover arrears of rent from the defendant in respect of the year 1278. And he states the amount of those arrears at Rs. 98-11 annas. The defendant admits that he owes rent to the plaintiff for the year 1278, but he says that the rent which he owes is less than Rs. 98-11 annas. And indeed there seems to be scarcely any doubt that the plaintiff in this suit seeks to recover from the defendant a higher rate of rent than he has hitherto been receiving from the defendant. In other words, he is seeking to recover arrears of rent at an enhanced rate, although he does not say so in terms, neither has he made any foundation for a claim of this kind according to the provisions of the Rent Law. It seems, however, that the cause of action upon which he comes into Court to make this claim upon the defendant is, that he has lately taken a settlement from Government of land, of which this is a portion, at a higher rate of revenue than that at which he held it before. And the Subordinate Judge says: "It "would be quite contrary to equity if the "plaintiffs pay to Government at the rate "of Rs. 3 per beegha, and receive rents "from the ryots at a less rate. There is "no need of issuing a notice for obtaining "rent equal to the amount of malgoozaree "fixed by Government in the settlement. "On the contrary, a notice is necessary to "be issued when the plaintiffs wish to obtain "rents more than that fixed by Government "in the settlement, or if, after the settlement "by Government, the plaintiffs themselves "had realized from any tenant at a less "rate."

The position thus taken up by the Subordinate Judge is, we think, unsound. If the defendant is a ryot having a right of occupancy, then his rate of rent can only be enhanced in the mode prescribed for that purpose by the Rent Law. If he be not a ryot having a right of occupancy, then the plaintiff has laid no foundation for this suit. He can only claim arrears of rent upon the footing of actual agreement, express or implied. The first Court took the view which we have just endeavoured to explain, and gave the plaintiff a decree simply for the rent at the old rates; in fact, the rates admitted by the defendant. And it appears to us that this was a right decision. Accordingly we reverse the decree of the Lower Appellate Court, and affirm that of the first Court. The appellant must have his costs in this Court and in the Lower Appellate Court.

The 28th April 1874.

Present:

The Hon'ble W. Ainslie, *Judge.*

Partition—Revenue-paying Land—Jurisdiction —Declaratory Decree.

Case No. 1730 of 1873.

Special Appeal from a decision passed by the Subordinate Judge of Chittagong, dated the 23rd July 1873, reversing a decision of the Moonsiff of Hawla, dated the 24th April 1873.

Ruttun Monee Dutt and others (Plaintiffs), *Appellants.*

versus

Brojo Mohun Dutt and another (Defendants), *Respondents.*

Baboo Aukhil Chunder Sen for Appellants.

Baboo Sreenath Banerjee for Respondents.

A suit for partition of revenue-paying land is not cognizable by a Civil Court; and it cannot succeed even as to lakhiraj land unless it specifies quantity and situation.

Failing in such a suit, a plaintiff cannot as of right claim a declaratory decree.

THIS was an application for a partition of a certain plot of land described as comprising 3 dags, No. 124 of nowabad property, and Nos. 125 and 126 of resumed lakhiraj land. The plaintiff claimed two-thirds of the whole, and asserted a local custom whereby the elder brother was, on a partition taking place, entitled to claim the northern portion of the block. The defendant, amongst other things, disputed the right of the plaintiff to more than one-half. The first Court gave the plaintiff a decree for two-thirds of the land.

The second Court reversed that decision, holding that a suit of this nature "for partition of land of a joint undivided revenue-paying mehal is not cognizable by the Civil Court." It seems to me that the Subordinate Judge is perfectly right on this point. If the Civil Court could direct the partition of a small quantity of revenue-paying land, the Civil Court could also divide a larger quantity or successive small quantities making up the whole, without the intervention of the Collector, on whom the power to make a division is expressly conferred by Regulation XIX. of 1814.

It is said that dag No. 124 is rent-free land, and capable of being divided by the