The 29th April 1875.

Present:

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

Zemindaree Rights—Declaratory Decree.

Case No. 1581 of 1874.

Special Appeal from a decision passed by the Second Subordinate Judge of Rajshahye, dated the 1st June 1874, reversing a decision of the Moonsiff of Pubna, dated the 31st March 1873.

Bipin Beharee Roy (one of the Defendants), *Appellant,*

versus

Issur Chunder Sen and others (Plaintiffs), *Respondents.*

Baboo Bhoobun Mohun Doss for Appellant.

Baboos Mohinee Mohun Roy, Umbika Churn Bose, and *Bhyrub Chunder Banerjee* for Respondents.

Where a plaintiff's claim in a suit for rent is disallowed on the ground that his zemindaree right is denied, he is justified in going to the Civil Court to have his title declared.

IT seems to me that this special appeal ought to be dismissed. I think the case is brought within what is called the case of Fyz Ali Khan, decided by the Privy Council on the 22nd of January 1873, and re-affirmed in a very recent decision of the Privy Council delivered on the 10th February 1875.

The case of Fyz Ali Khan is described in this last judgment as being one in which the plaintiff sought as zemindar to enhance the rent of a tenant. He was met by the objection that the zemindaree right was not in him. And therefore he went to the Zillah Court to establish his zemindaree right.

I think that on the facts found by the Subordinate Judge in this case which are no doubt correct, this case stands in the same position. The plaintiff went into the Revenue Court to get rent from a person whom he sued as his tenant. As far as I can see, that person raised no substantial question as to the plaintiff's right to get the rent. But another person, the present defendant, stepped in, and was made a party to the suit. And I have no doubt (notwithstanding some expression in the judgment ultimately given that the kubooleut was not proved) that the real ground why the plaintiff's claim in that suit was disallowed was that his zemindaree right or right analogous thereto was denied by the present defendant. I think, therefore, that the case falls within the decision of the Privy Council in Fyz Ali Khan's case, and that the plaintiff was justified in coming to the Civil Court to get his title declared. That was in reality the only way in which he could prevent a similar objection being again made, and possibly being again successful if he sued for rent. I think, therefore, the judgment of the Subordinate Judge is borne out by the decision of the Privy Council. But, as the evidence in this case has been taken, the Subordinate Judge was wrong in remanding the case to the first Court under section 353, Act VIII. of 1859; he should have tried the case himself. The case will be, therefore, remanded to the Subordinate Judge to be heard by him, but, as the special appellant has failed on the objection taken, he will pay the costs of this appeal.

The 29th April 1875.

Present:

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

Enhancement of Rent—Notice—Credibility of Witnesses—Special Appeal.

Case No. 1305 of 1874.

Special Appeal from a decision passed by the Second Subordinate Judge of Mymensingh, dated the 7th April 1874, reversing a decision of the Moonsiff of Pingnah, dated the 5th January 1874.

Sreekant Ghose (Defendant), *Appellant,*

versus

Bhugwan Chunder Sen (Plaintiff), *Respondent.*

Baboo Tarinee Kant Bhuttacharjee for Appellant.

Baboo Nullit Chunder Sen for Respondent.

In a suit for rent at an enhanced rate, the landlord is not indispensably bound to prove the very rate which he claims in his notice.

Where the first Court and Lower Appellate Court differ as to the credibility of witnesses, the High Court has no power to interfere in the matter in special appeal.

I THINK the special appeal ought to be dismissed. The first ground is that the landlord suing for rent at an enhanced rate must prove the very rate which he claims

in his notice. Such a notion as that has not been shown to have been sanctioned by any provision of the law or by any decision of this Court.

The second objection is that the notice is indistinct. The notice has been translated, and it seems to me to be a clear notice, and that any ryot could perfectly understand it.

The third objection is also bad. It is objected that the witnesses relied on by the Subordinate Judge are not witnesses who speak of the rates of rent being paid by ryots of the same class in respect of lands with similar advantages. Upon reading the judgment even of the first Court, it is quite clear that they were so treated by the first Court. And there is no doubt that they were so.

The only question in this case is one of credibility. The first Court, for the reasons given by it, chose to disbelieve those witnesses. The Court of Appeal thought that two of those witnesses were credible. That is a matter with which I have no power to interfere in special appeal. The judgment of the Lower Appellate Court must prevail upon that point. The special appeal will be dismissed with costs.

The 29th April 1875.

Present:

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

Act VIII. (B. C.) of 1869, s. 14—Service of Notice.

Case No. 1215 of 1874.

Special Appeal from an order passed by the Officiating Additional Subordinate Judge of Tipperah, dated the 24th March 1874, reversing a decision of the Additional Moonsiff of Ameergaon, dated the 30th August 1873.

Mahomed Elahee Buksh Chowdhry and others (Defendants), *Appellants,*

versus

Brojo Kishore Sen (Plaintiff), *Respondent.*

Baboo Rajendro Nath Bose for Appellants.

Baboo Bhyrub Chunder Doss for Respondent.

Where personal service of notice upon a co-sharer, under Act VIII. (B. C.) of 1869, s. 14, is found to be impracticable, the notice may be stuck up at the adjoining house of another co-sharer.

I THINK the special appeal ought to be dismissed. Section 14, Act VIII. (B. C.) of 1869, does not lay down exactly the mode in which service of notice is to be effected, but, if possible, it is not to be otherwise than personal. To effect personal service in this case was impracticable. And having failed to effect personal service, notice was stuck up at the house of one of the co-sharers who lives in a house adjoining the house of the other co-sharer. The Lower Appellate Court seems to have thought that that was a service of notice at the usual place of residence within the meaning of the section. And I am not prepared to say as a matter of law that that finding is wrong.

It has also been contended that each party was entitled to have a separate copy of the notice. The Act does not say in so many words that the parties are to have a copy of the notice at all, though probably it was intended that they should have the means of ascertaining exactly what the notice contained. In this case they had that means, because there is no reason to suppose that the notice which was stuck up at the house of one of the co-sharers was not accessible to the other at any time he pleased if he wished to ascertain its contents. The parties also in this case do not in any way deny that they had full notice of the intention to enhance, and of all the particulars which the Act intends that they should have.

Under these circumstances, I do not think I am called upon to say that the decision of the Lower Appellate Court is wrong, and that the service of notice was insufficient.

The special appeal will, therefore, be dismissed with costs.
