Before Mr. Justice Pigot and Mr. Justice Stevens.

MON MOHINI GOOPTA (PLAINTIFF) *v.* RAGHOONATH MISSER AND OTHERS (DEFENDANTS.) * 1895 *August 6.*

Landlord and tenant—Property in trees growing on land—Lease for purpose of clearing jungle land.

Where a lease of a *mouzah* was granted for the express purpose of clearing jungle land and bringing it under cultivation, and no reservation of the right in the trees was made in the lease, *Held* that the lessee had the right to appropriate the trees when cut.

THE facts of this case are sufficiently stated in the judgment of the High Court.

Babu *Kally Kishen Sen* for the appellant.

Babu *Jogesh Chunder Dey* for the respondents.

The judgment of the High Court (PIGOT and STEVENS, JJ.) was delivered by

PIGOT, J.—In this case, by a *pottah* dated the 29th Assar 1293, a *mouzah* was let to the plaintiff-appellant by the defendants who are the zemindars to whom the *mouzah* belonged. The *mouzah* was let by name and with a description of its boundaries; it was let at a yearly rent of Rs. 18-12 annas, which amount was arrived at after deducting Rs. 11-4 annas from the annual *jama* of Rs. 30, that deduction being a deduction made in respect of a six annas share out of sixteen annas of the *mouzah* which the *pottah* expresses to be given as remuneration for the lessee's labour in reclaiming the land. The lands are jungle lands. The appellant and, as she alleges, her deceased husband, who was the lessee under this *pottah*, have been in the habit of cutting the wood in the jungle for the purpose of clearing the land for cultivation and of appropriating the trees or growth so cleared to their own purpose. The zemindars, the defendants, as landlords have lately begun to dispute the right of the lessee under this *pottah* to cut any trees at all, and also the right of the lessee to appropriate the trees and the other growth cut in the process of clearing; and this suit is brought for a declaration of the plaintiff's right to, and confirma-

*Appeal from Appellate Decree No. 243 of 1894 against the decree of Babu Debendra Lal Shome, Subordinate Judge of Manbhoom, dated the 27th of November 1893, modifying the decree of Babu Taraprossono Ghose, Munsif of Raghoonathpur, dated the 17th of May 1893.

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tion of her possession of, the jungle, and for the price of some trees cut by the defendants in assertion apparently of the defendants' alleged right to the trees.

In the *pottah* there is no period assigned as a term for the lease, and there is a provision in the *pottah* for the enhancement of rent under proceedings to be taken for such enhancement, and that provision contains these words, "and you and your heirs shall take settlement accordingly," from which it may be reasonably contended that this lease is, as the appellant says, a *mokurari* one. We do not however in this case hold anything one way or the other as to this.

The plaintiff's suit was dismissed by the lower Appellate Court so far as her claim to the right in the trees cut is concerned, and she appeals before us. It was not contended before us that the plaintiff was not entitled under the terms of the *pottah* to cut the trees of the jungle; the contention of the respondents was limited with respect to that to the appropriation of them after they were cut, and this it was contended that the plaintiffs could not do, but that they were entirely the property of the zemindars, and that the plaintiff had no right whatever to them, and the case of *Nafar Chandra Pal Chowdhuri* v. *Ram Lal Pal* (1) was cited to us as showing that the ordinary law is that a zemindar is entitled as against an ordinary tenant to the property in the trees, and it was contended that that ordinary law applied in the present case. Now, this is a lease for the express purpose of clearing and bringing the land under cultivation; it contemplates that after a certain time, no doubt not specified in the lease, an enhancement of rent shall take place, and that for a time, also not specified, no rent is to be paid in respect of six annas of the *mouzah*. The entire *mouzah* is actually leased to the lessee by name as we have said, and with its boundaries set out, and there is no doubt that the proprietary right is conferred in the entire *mouzah* by the lessors upon the lessee. The appellant's contention is founded, so far as authority is concerned, chiefly upon the case of *Goluck Rana* v. *Nubo Soonduree Dossee* (2) in which Mr. Justice Birch's judgment goes at length into the rights arising under a lease, though not identical in terms,

(1) I. L. R., 22 Calc., 742. (2) 21 W. R., 344.

still not quite dissimilar to the present. Mr. Justice Birch's judgment contains this passage: "At the time the grant under consideration was made the land was waste and jungle. No rights were reserved. To enable the grantee to cultivate he first had to cut down and root out the original jungle, and he was free to plant trees or sow crops as he thought fit. So long as he obtained his rent the grantor could not interfere with him."

No doubt in that case (which was before Markby and Birch, JJ.) the question arose in respect of the trees which had been planted by the lessee; there is that difference between the two cases. In the case of *Goluck Rana* v. *Nubo Soondaree Dossee* (1) the right of the tenant to cut down and appropriate the trees was affirmed. This case, we think, is a stronger one for the appellant. The express purpose of letting was the cutting down of the trees; no reservation of the right in the trees was made in the lease, and in order to come to the conclusion that that right was reserved we must assume that the tenant's right was simply to cut down trees and to wait until his landlords chose to remove them before he proceeded to get the land into complete cultivation; that, on the other hand, the landlords, without reserving any right of re-entry, had by implication the right to enter when they pleased and remove the trees that had been cut down. The fair implication arising from the terms of the lease is that the tenant must have the right to take the trees, and so far as it enabled him to do so, we cannot say that the preliminary expense provided in the lease for clearing the jungle was of itself sufficient—a work which may be reasonably supposed would be profitable to his landlords as well as himself, and it is not unreasonable to suppose that the appropriation of the trees is one of the matters of encouragement to the tenant to do what would be beneficial to the landlords of the estate—to clear and bring into cultivation all the land let.

A case has been cited to us which was relied upon by the Court below decided by this Court some years ago before Prinsep and Wilson, JJ., but that case does not apply at all to the present case. That was a case in which there was a controversy between the zemindar and the lessee under a *jungleburi* lease

(1) 21 W. R., 344.

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in respect of a jungle within his zemindari. No proprietary right in the land, the subject-matter of the dispute, was conferred by the lease in that case, but the lessee was given the right to clear the jungle and cultivate and occupy as tenant such land as he might clear; and it was held that this right was not one under which he could claim the right to cut and keep the trees belonging to the jungle as he pleased. It was also held that he had not shown any right such as he also claimed, a possessory right in the jungle itself. Here the circumstances of the case in respect of the terms of the lease are wholly different, because all the land upon which the jungle grows, upon which the trees have in this instance been cut, is leased to the plaintiff, probably in *mokurari*, although we express no opinion as to this.

There being, therefore, no authority against the opinion, so far as bears upon this case, of Markby and Birch, JJ., in the case of *Goluck Rana* v. *Nubo Soonduree Dossee* (1), and the terms of the lease appearing to us to justify the claim of the appellant, we allow the appeal with costs throughout, and we direct that a decree be entered in favour of the appellant in respect of her right to cut and appropriate the trees of the jungle within the limits of the *mouzah* leased to her.

F. K. D. *Appeal allowed.*

Before Mr. Justice Prinsep and Mr. Justice Ghose.

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SUBJOO DAS (OBJECTOR) v. BALMAKUND DAS, MINOR, BY HIS GUARDIAN GOPAL DASS (DECREE-HOLDER.)*

Execution of decree—Execution of decree against surety—Security for due performance of appellated ecree, Enforcement of—Civil Procedure Code, (Act XIV of 1882 as amended by Act VII of 1888), section 546.

A security bond given by a third party for the due performance of the decree of the Appellate Court under section 546 of the Civil Procedure Code cannot be enforced in execution of that decree.

Radha Pershad Singh v. *Phuljuri Koer* (2), *Kali Charan Singh* v. *Balgobind Singh* (3) and *Tokhan Singh* v. *Udwant Singh* (4) followed in

* Appeal from Order No. 250 of 1894, against the order of Babu Abinash Chandra Mitter, Subordinate Judge of Tirhoot, dated the 7th of June 1894.

(1) 21 W. R., 344.
(2) I. L. R., 12 Calc., 402.
(3) I. L. R., 15 Calc., 497.
(4) I. L. R., 22 Calc., 25.