

Before Mr. Justice Mitter and Mr. Justice Maclean.

GOLABOLEE (PLAINTIFF) v. KOTOSBOOLLAH SIRCAR AND
OTHERS (DEFENDANTS).*

1878
July 11.

Ejectment, Suit for—Beng. Act VIII of 1869, s. 27—Limitation—Suit for Possession on Declaration of Title.

The only remedy for a party in the position of an occupancy ryot, who alleges he has been ejected in contravention of the proviso to s. 22 of Beng. Act VIII of 1869, is a suit on the ground of the illegal ejectment, and such a suit must, under s. 27, Beng. Act VIII of 1869, be brought within one year from the ejectment.

THIS was a suit to recover possession of 15 bigas of jote land by declaration of title. The facts are sufficiently stated in the judgment of the Court.

Baboo *Issur Chunder Chuckerbutty* for the appellant.

Baboo *Nullit Chunder Sein* for the respondents.

MITTER, J.—In this case the plaintiff seeks to recover possession of a tenure from which he alleges that he has been dispossessed by the zemindar-defendant, assisted by the other defendants. The lower Appellate Court found that the plaintiff's allegation as to ejectment is not made out; and it is also found, upon the evidence on the record, that the plaintiff abandoned the land and went to another village. Upon that ground alone it is quite clear that the judgment of the lower Appellate Court could be maintained. But the lower Appellate Court has further decided the case against the plaintiff upon a question of law raised between the parties upon the assumption that the plaintiff has really been ejected from the tenure. We think that the judgment of the lower Appellate Court upon that

* Special Appeal, No. 1700 of 1877, against the decree of H. Beveridge, Esq., Officiating Judge of Zilla Rungpore, dated the 18th of May 1877, reversing the decree of Baboo Aubinash Chunder Mitter, Munsif of Bogra, dated the 21st of November 1876.

1878
 GOLABOLEE
 v.
 KOOTOSBOOL-
 LAH SIRCAR.

point also is correct. The facts upon which the plaintiff relies, are shortly these: that a suit for arrears of rent was brought against him in the middle of the year 1278 (1871) by the zemindar. A decree was obtained, and in execution of that decree, certain moveable property and a hut belonging to the plaintiff were sold. It is also found by the lower Appellate Court that the plaintiff went away from the village without paying the rent of the year 1278. Upon these facts, the District Judge holds that, under s. 6, Beng. Act VIII of 1869, the right of occupancy, which is the only right the plaintiff had, came to an end. Section 6 provides, that "every ryot who shall have cultivated or held land for a period of twelve years, shall have a right of occupancy in the land so cultivated or held by him, whether it be held under a pottah or not, so long as he pays the rent payable on account of the same." It is quite clear, therefore, that the tenant not having paid the rent of the year 1277 (1870) and of the year 1278 could not claim the right of occupancy given to persons of his class by s. 6 of the Rent Act. Furthermore, s. 22 says: "When an arrear of rent remains due from any ryot at the end of the Bengalee year, or at the end of the month of Jeyt of the Fuslee or Willayuttee year, as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due; provided that no ryot having a right of occupancy or holding under a pottah the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act." It is quite clear, therefore, that the tenant in this case, not having paid the rent of the years 1277 and 1278, was liable to be ejected,—that is to say, the zemindar had a right to take khas possession of the land; and the proviso in the section secures to the tenant having a right of occupancy only this much, that he shall not be ejected otherwise than in execution of a decree or order under the provisions of the Act above-mentioned. Section 52 also is to the same effect, it says: "Any person desiring to eject a ryot, or to cancel a lease on account of nonpayment of arrears of rent, may sue for such ejection or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as

evidence of the existence of such arrear in a suit for such ejection or cancelment. In all cases of such suits for the ejection of a ryot, or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed."

On reading these sections together, it is clear that the zemindar's right to eject the tenant accrues on the tenant's nonpayment of the rent; but the mode* of enforcing that right is restricted by ss. 22 and 52 of the Act. That being so, it is clear that, if in this case the zemindar did not conform to the procedure laid down in ss. 22 and 52, the tenant could recover possession of the tenure only upon the ground of illegal ejection, and not upon the ground of any right. In this view of the case, we think that the lower Appellate Court was right in applying the limitation prescribed in s. 27 of the Rent Act. We, therefore, think that, upon both these grounds, the decision of the lower Appellate Court is correct, and the special appeal must be dismissed with costs.

1878
GOLABOULEE
v.
KOOTOSBOOL-
LAH SIRCAH.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Maclean.

FUCKORUDDEEN MAHOMED AHSAN (PLAINTIFF) v. MOHIMA
CHUNDER CHOWDHRY AND OTHERS (DEFENDANTS).*

1878
July 11.

Limitation Act (IX of 1871), sched. ii, arts. 100 & 118—Suit for Contribution.

Quere—Whether in a suit for contribution, on the ground that the plaintiff and defendants were jointly liable under a decree, in execution of which the plaintiff's property alone was sold, the limitation prescribed by art. 100, sched. ii of Act IX of 1871, is applicable, or that prescribed by art. 118, sched. ii of the same Act?

THE facts are fully stated in the judgment.

Baboo *Grija Sunker Mozoomdar* for the appellant.

* Special Appeal, No. 1717 of 1877, against the decree of Baboo Nund Coomar Basu, Second Subordinate Judge of Zilla Rajshahye, dated the 7th of May 1877, affirming the decree of Baboo Shumbhoo Chunder Dey, Munsif of Shahzadpore, dated the 14th of June 1876.