

Before Mr. Justice Ameer Ali and Mr. Justice Rumpini.

RAJESHWAR PERSHAD SINGH (PLAINTIFF) v. BURTA KOER
(DEFENDANT.)^{*}

1894
April 13.

Bengal Tenancy Act (VIII of 1885), section 158—Application for enhancement of rent when no settlement proceedings are in operation.

The Court in dealing with an application under section 158 of the Bengal Tenancy Act cannot pass a decree for enhancement of the rent. Where therefore a landlord seeks to enhance the rent of his tenant when no settlement proceedings are going on he must institute a suit for the purpose, and cannot do so by means of an application under section 158.

THIS was an application by Rajeshwar Pershad Singh and others, proprietors of *mouza* Yakubpore, under section 158 of the Bengal Tenancy Act, for the determination of the incidents of the tenancy of one of his tenants, Burta Koer, in respect of lands held by her in that *mouza*.

The Subordinate Judge, after a commission had been issued to ascertain the situation, quantity and boundaries of the land held by Burta Koer, found that there was in her occupation under the applicants 12 *bighas* 16 *cottahs* 4 $\frac{3}{4}$ *dhurs* which was in excess of the quantity of land shown by the *jamabandi* by 1 *bigha* 6 *cottahs* 4 $\frac{3}{4}$ *dhurs*. As to the rent payable by her he observed:—

“The *jama* payable by Burta Koer for 11 $\frac{1}{2}$ *bighas* of land was Rs. 14-4-9. Hence the rent payable by her for 12 *bighas* 16 *cottahs* 4 $\frac{3}{4}$ *dhurs* of land would be Rs. 15-14-9, and this I find to be the rent payable by Burta at the time of the application;” and a decree was made in accordance with that decision.

On appeal the Judge agreed with the lower Court as to the amount of land held by Burta Koer. He said “as to the rent payable for the holding the usual attempt was made to assess rent at rates corresponding to those paid for adjacent lands of similar quality. The Subordinate Judge, however, found the rent actually paid, and assessed rent on the excess lands at the existing rate. On this part of the case also I agree with his decision. The appeal will accordingly be dismissed with costs.”

^{*} Appeal from Appellate Decree No. 1303 of 1893, against the decree of J. Kelleher, Esq., District Judge of Sarun, dated 3rd of April 1893, affirming the decree of Babu Nilmony Dass, Subordinate Judge of that district, dated the 11th of December 1891.

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From this decision the landlord appealed mainly on the grounds that the Judge was wrong in holding that the rent payable at the time of the application meant the rent actually paid, and that he should have found what was the rent which the tenant was liable to pay at the time of the application, that is, he should have assessed rent at rates paid for adjacent lands of similar quality, or at any rate he should have assessed the rent of the excess lands at rates paid for similar lands in places adjacent.

Babu *Jadub Chandra Seal* for the appellant.

Babu *Saligram Singh* for the respondent.

The judgment of the Court (AMBER ALI and RAMPINI, JJ.) was as follows :—

This is a case under section 158 of the Bengal Tenancy Act. The plaintiffs are the landlords, and they apply for the determination of the incidents of the defendant's tenancy.

The only point raised before us in this appeal is that the lower Courts, in determining the rent payable by the defendant, have not fixed that rent in accordance with the rates paid for similar lands in the vicinity, but have calculated it at the rates hitherto paid by the defendant. In short, the objection is that the Courts below have not enhanced the defendant's rent. We, however, think the lower Courts are right. Section 158 (d) lays down that a Court dealing with an application under section 158 is to determine the rent payable by the tenant "at the time of the application." It, therefore, could not have been intended that in a case under this section the Court should pass a decree for enhancement which can ordinarily only take effect from the beginning of the agricultural year, next following, or from that of the year next but one following, the year in which the decree was passed.

It has been said that when no settlement proceedings are going on, an application under section 158 takes the place of an application under section 104 (2), in the course of which a Settlement Officer has power to enhance or reduce a tenant's rent. This is quite true, but when settlement proceedings are going on, the jurisdiction of the Civil Court is in abeyance (see section 111 a), so that no enhancement suit can then be instituted, and hence it is that the Settlement Officer is empowered to alter a tenant's rent. But an application under section 158 does not oust the jurisdiction

of the Civil Court in respect of the alteration of a tenant's rent. [It, therefore, seems to us that if a landlord seeks to enhance his tenant's rent when no settlement proceedings are going on, he must institute a suit for the purpose, and cannot do so by means of an application under section 158.

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We accordingly dismiss this appeal with costs.

Appeal dismissed.

J. V. W.

ORIGINAL CIVIL.

Before Mr. Justice Sale.

PROSONOMOYI DASSI v. SREENAOUTH ROY AND OTHERS.
 SREENAOUTH ROY AND OTHERS v. MUDDOOSOODUN DUTT.*

1894
 May 14.

Civil Procedure Code, section 295—Sale in execution of decree—Distribution of sale proceeds—Realization of proceeds of sale—Sale under agreement sanctioned by Court—Sale not of the right or interest of judgment-debtor in property.

P., the plaintiff in a suit No. 369 of 1886, obtained a decree for Rs. 2,14,728, in execution of which certain immoveable property was attached, including the premises 22 Strand Road, which was subject to certain trusts created by a deed, dated 2nd February 1858, executed by the father of the judgment-debtors, who with one M. were trustees of the deed. At the time of the attachment a suit No. 448 of 1883 was pending, in which the judgment-debtors as plaintiffs sought to have it declared what were the valid trusts under the deed, and that, subject to such trusts, they were absolutely entitled to the premises 22 Strand Road and the other properties; in that suit on 26th March 1888 a decree was made declaring the valid trusts, and charging the premises 22 Strand Road, with the payment of certain specific sums. In 1891, the judgment-debtors brought a suit No. 441 of 1891 to have the premises 22 Strand Road sold freed from the trusts, to provide for the trusts by setting apart a sufficient sum out of the purchase-money, and to have the balance divided between the judgment-debtors; and by the decree in that suit, dated 2nd September 1892, the trustees of the deed were authorised to sell the premises 22 Strand Road, and were directed out of the proceeds of sale to set aside Rs. 45,000 to provide for the trusts, next to pay the costs therein directed, and then to apply the balance for the purposes in the plaint mentioned. In pursuance of this authority the trustees on 25th February 1893 entered into an agreement with one J. L. for sale to him of the premises 22 Strand Road for Rs. 1,43,000. On 8th August 1893 a notice was issued at the instance of P. calling on the judgment-debtors to

* Application in Original Civil Suits Nos. 369 of 1886 and 441 of 1891.