

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Banerjee.

RUBIUN-NESSA (PLAINTIFF) *v.* GOOLJAN BIBEE AND OTHERS
(DEFENDANTS).

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May 26.

Bengal Tenancy Act (VIII of 1885), section 149—Suit by third party claiming rent paid into Court in rent suit, nature of—Title suit.

The object of section 149 of the Bengal Tenancy Act is to prevent tenants being harassed when disputes arise between rival claimants to the land in respect of which the rent is due. In a suit, therefore, under clause (3) of section 149 the plaintiff is entitled to have the question of title as well as that of possession tried, and to obtain the injunction therein mentioned. *Jagudamba Devi v. Protap Ghose* (1) referred to and explained.

THIS was a suit arising out of a rent suit brought by the defendant No. 1 against the defendant No. 2. The latter denied the relationship of landlord and tenant, and alleged that the rent was due to the plaintiff, upon whom a notice was accordingly served in terms of section 149, clause (2) of the Bengal Tenancy Act (VIII of 1885). The plaintiff now sued to obtain an order under clause (3) of that section to restrain payment out of the money deposited by defendant No. 2, and to direct payment of the said money to herself, upon establishment of her right to the land in the occupation of the defendants No. 2 and No. 3, the plaintiff alleging a title to the same derived from her husband, the defendant No. 4.

The Court of first instance held upon the evidence that the plaintiff had clearly established her title to the land in question as falling within her husband's admitted share in the mehal and as having been purchased by her from him, and decreed the suit in her favour. The lower Appellate Court remarked as follows:—

“The first Court considered and tried the suit as a title suit raising several issues. In the case of *Jagudamba Devi v. Protap Ghose* (1) it has been held by the High Court that such a suit is

* Appeal from appellate decree No. 1342 of 1889, against the decree of Baboo Bhagwan Chunder Chatterjee, Subordinate Judge of Chittagong, dated the 22nd of April 1889, reversing the decree of Baboo Paresh Nath Chatterjee, Munsif of Sitakund, dated the 21st of April 1888.

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not a title suit. The object of it, it appears from the clause, is to obtain an order restraining payment of the deposited money to the plaintiff in the rent suit. The only legitimate issue therefore in such a suit of a summary kind is in my opinion whether he plaintiff is entitled to restrain the payment to the defendant No. 1 of the money deposited by the tenants In a case like this the question of the conflicting titles of the hostile parties ought not, I think, to be gone into. Before the plaintiff can succeed, she is bound to prove that she has been actually and in good faith in receipt of the whole of the rent from the tenants, and if she fail to prove this the present suit ought to fail."

The lower Appellate Court held upon the evidence that upon this ground the plaintiff's suit ought to fail, but expressly abstained from deciding any question of title. From this decision the plaintiff appealed to the High Court on the ground that the lower Court had misapprehended the ruling cited, and had erred in restricting the enquiry to the question as to who was in actual receipt of the rent, the real question being as to the title to the land.

Mr. *M. L. Sandel* for the appellant.

Baboo Akil Chunder Sen for the respondents.

The judgment of the High Court (PETHERAM, C.J., and BANERJEE, J.) was delivered by :—

PETHERAM, C.J. —This is a suit which was brought in consequence of money having been paid into Court by a tenant under section 149 of the Bengal Tenancy Act. One of the defendants to the present suit sued a ryot to recover some rent. The ryot stated that the rent was claimed by the present plaintiff, and paid the amount into Court under section 149. When that was done, the plaintiff brought the present suit against the defendants to establish her right to the land in respect of which she said that the rent was payable to her.

The matter came before the Munsif. He went into the matter and decreed the plaintiff's claim. The defendants appealed to the Subordinate Judge, and the Subordinate Judge has dismissed the plaintiff's suit, not because he found that the plaintiff was not entitled to the rent as an incident to the title to the land, but because he says you have not proved that you had been in possession in the sense that you were getting this rent from these

tenants for the last five years, and he refused to go into the question of title at all, relying upon the case of *Jagadamba Devi v. Protap Ghose* (1).

In that case the Judges held, for the purposes of stamp duty, that that was not a title suit, and that was all they held. That, no doubt, was a suit which was brought to determine which of two parties was entitled to the money paid into Court under that section; but we do not know what the form of that suit was, or in fact anything more than that the Judges considered that the suit was not a title suit. That does not determine that no suit which is brought under circumstances such as these can be a title suit, or that the plaintiffs in a suit to establish their right where the matter has come into dispute by reason of another rent suit, and of the money having been paid into Court, may not go into their title. It seems clear to me that the object of section 149 was to prevent tenants being harassed where disputes arise between rival claimants to the land in respect of which the rent is due, and consequently whether the dispute between such parties is a dispute as to title, or a dispute as to possession only, they are at liberty to have that tried, and in the suit in which that is being tried to obtain the injunction which is mentioned in sub-section 3 of section 149 of the Bengal Tenancy Act.

For these reasons we think that the Subordinate Judge was wrong in the view which he took of this case, and that the case must be remitted to him for him to consider the matter in all its bearings, and, having regard to title as well as to possession, determine whether the plaintiff or the defendants in the present suit are entitled to this sum of money which has been paid into Court by the tenants.

The costs will abide the result.

Case remanded.

A. A. C.

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