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their representatives on the record of the suit, in regard to the execution, discharge or satisfaction of a decree, whether the claim set up be a claim on the ground that the property is that of a person on the record or belongs to any third party. It seems to me that the effect of the decision between such parties is, that the right to enforce or oppose execution against the property in dispute is decreed and finally determined under section 244, subject to the result of such appeal as is given to them by law.

PRINSEP, J.—I am of the same opinion.

GHOSE, J.—I am also of opinion that an objection taken by a person, who has become the representative of a judgment-debtor in the course of the execution of a decree, to the effect that the property attached in satisfaction thereof is his own property, is a matter cognizable only under section 244 of the Civil Procedure Code, and not the subject-matter of a separate suit. And I agree with Mr. Justice O'Kinealy in thinking that the matter does not fall within sections 278 to 283, and that the effect of a decision upon the objection of the representative is that the question of the liability or otherwise of the property to satisfy the decree is determined under section 244, subject to the result of such appeal as is allowed by law.

A. A. C.

APPELLATE CIVIL.

Before Mr. Justice Pigot and Mr. Justice Beverley.

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April 2.

GOKHUL SAHU AND OTHERS (PLAINTIFFS) *v.* JODU NUNDUN ROY AND ANOTHER (DEFENDANTS).

GOBIND SAHU AND OTHERS (DEFENDANTS) *v.* LUCHMI NARAIN ROY AND OTHERS (PLAINTIFFS).*

Bengal Tenancy Act (VIII of 1885), s. 106—Decision of a Revenue Officer under—Res judicata.

A question heard and decided by a revenue officer under s. 106 of the Bengal Tenancy Act is *res judicata* between the same parties in a subsequent suit in a Civil Court.

* Appeals from Appellate decrees Nos. 691 and 738 of 1889 against the decrees of Baboo Upendra Chundra Mullick, Subordinate Judge of Tirhoot, dated the 30th of January 1889; affirming the decrees of Baboo Joogulkishore, Munsiff of Mozufferpore, dated the 31st of December 1887.

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Hurri Sunker Mookerjee v. *Muktaram Patro* (1) not applied.

UNDER an order passed under section 101 of the Bengal Tenancy Act, 1885, a survey was made and a record of rights prepared in respect of mouzah Bishunpore Soamai, also called mouzah Memari Kandh, Chuckla Nai, pergana Bisara, in the district of Mozufferpore. During the preparation of the record of rights one bigha five cottas of land situate within this mouzah were claimed by Luchmi Narain Roy, Jodu Nundo Roy, and Rambelas Roy (hereinafter called the Roys) as mal or rent-paying land appertaining to their estate, while Gokhul Sahu and four others (hereinafter called the Sahus) claimed the land as part of the five bighas of rent-free brohmutter land purchased by them along with other properties under a deed of sale dated 7th March 1883. After a full enquiry into the dispute between the Roys and the Sahus, the Revenue Officer, on 21st August 1886, by an order under section 106 of the Act decided that this one bigha five cottas of land was the mal land of the Roys and liable to pay rent. Against this order the Sahus appealed under section 108 to the Special Judge appointed under that section; and on 28th April 1887 the Special Judge reversed the order of the Revenue Officer, holding that the land was the rent-free brohmutter land of the Sahus. From this decision of the Special Judge there was no second appeal: but both parties filed separate suits in the Civil Court.

On the 10th June 1887 the Sahus brought a suit (No. 389 of 1887) to recover from the Roys the sum of Rs. 59-10-9 as damages for having wrongfully cut and carried away their crops from this one bigha five cottas of land. The Roys alleged that the land was their mal land, and denied that the crops belonged to the Sahus. Suit No. 489 of 1887 was in respect of the same piece of land, and was instituted on the 7th July by the Roys against the Sahus and their vendors. In this suit the Roys alleged that the land was their mal land, and was situate within their putti; that they were in possession; and that neither the Sahus nor their vendors had ever been in possession of it. They further alleged that the Judge's order of 28th April 1887 was made *ex parte*, and contended that it was illegal and ought to be set aside. Accordingly, they prayed for a

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declaration that the land was their mal land, for confirmation of possession, and that the Judge's order of 28th April 1887 should be set aside. The Sahus alleged that the land in suit was part of the five bighas of brohmutter land which they had purchased under a deed of sale dated 7th March 1883, and that they had been in possession since the date of their purchase; that by a sanad dated Kartick 1199 Fusli (October 1792) these five bighas of brohmutter land were granted to one Bahuran Misser, and that they had purchased them from the heirs of Bahuran Misser. They denied that the Roys or their predecessors in title had been in possession within 12 years prior to the institution of the suit, and contended that the suit was barred by limitation. The Sahus also pleaded that the Judge's order of 28th April 1887 was a bar to the suit under section 13 of the Code of Civil Procedure.

The two suits were tried together by the Munsiff.

The only issue material to this report was whether the suit of the Roys was barred under section 13 of the Civil Procedure Code.

The Munsiff found that the sanad of Kartick 1199 Fusli (October 1792) had been granted by the predecessors in title of the Roys, but held that the Sahus had failed to prove that the land was their rent-free brohmutter land and that they had raised the crops in suit. He held that the suit of the Roys was not barred under section 13 of the Civil Procedure Code or by limitation; and that the land was the *mal* land of the Roys. Accordingly the Munsiff dismissed the suit of the Sahus and decreed that of the Roys. This decision was affirmed by the Subordinate Judge.

The Sahus filed separate appeals in each case in the High Court.

Baboo *Sreenath Banerjee* for the appellants.

Baboo *Manmatha Nath Mitter* for the respondents.

The judgment of the High Court (PIGOT and BEVERLEY, JJ.) was as follows:—

These appeals raise a very important question under the Bengal Tenancy Act, and it is to be regretted that the facts out of which they arise are not more fully before us.

It would appear, however, that under the provisions of chapter X of the Bengal Tenancy Act a measurement was made and a record of rights prepared in respect of a certain local area within which the land in suit is situated. The terms of the order made

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under section 101 of the Act and the particulars specified therein in accordance with section 102 are not on the record; but it is admitted that one party (whom we shall call the Roys) claimed this land as rent-paying land appertaining to their estate, while the other party (whom we may call the Sahus) claimed it as their rent-free brahmuttor land. This dispute having been enquired into by the Revenue Officer under sections 106 and 107 of the Act, he decided that the land was *mal* land and liable to pay rent.

Against this decision the Sahus appealed under section 108 to the Special Judge appointed under that section—the Special Judge, it may be mentioned, being the District Judge of Tirhoot, and he reversed the decision of the Revenue Officer and held that the land was rent-free.

From that decision there was no second appeal.

Both parties, however, filed suits in the Civil Court. The Sahus sued the Roys for damages for having cut and carried the crops of the land, while the Roys sued the Sahus to set aside the Judge's decree and for a declaration that the land was *mal* and not the brahmutter of the Sahus. The two suits were tried together by the Munsiff, who gave the Roys a decree and dismissed the suit of the Sahus. On appeal this decision was affirmed by the Subordinate Judge.

One point which was taken and argued in both the lower Courts was that the decision of the Special Judge under section 108 of the Act operated as *res judicata* between the parties, and that no suit would lie to set it aside; and this is the point that has been pressed upon us in second appeal No. 738.

The question is one of very great difficulty, having regard to the provisions of the Bengal Tenancy Act on the subject. That Act nowhere defines with sufficient clearness the extent, scope, and object of the so-called record of rights. Section 102 in truth specifies certain particulars which *may* "either without, or in addition to other particulars," be recorded. The particulars there specified are such as presuppose the existence of a tenancy—such as the name and class of the tenant, the land held by him, the rent payable therefor and the nature of that rent, and the special conditions and incidents (if any) of the tenancy. If no relationship of landlord and tenant existed in respect of any particular piece of land, it seems to us to be at least doubtful whether any

entry could be recorded regarding it unless the order made under section 101 specially directed such entry to be made as one of the "other particulars" not specified in section 102.

In the present case we think we must take it upon the finding of the lower Courts that the Sahus are "tenants" within the meaning of the Act, and that the Revenue Officer was justified in making an entry regarding the land in suit.

By section 3, clause (3), a "tenant" is defined to mean "a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person." Now the brohmutter sanad of Kartick 1199 F.S., under which the Sahus claim to hold, is found by the Munsiff to have been granted by the predecessors of the Roys, and if genuine it operates as a special contract, but for which the Sahus would be liable to pay rent to the Roys. That being so, the Sahus, we think, are according to their own case tenants within the meaning of the Act, and the Revenue Officer therefore had jurisdiction to enter the particulars of the land in suit in his record of rights.

The next point is whether the Revenue Officer having heard and decided the dispute under section 106, his decision will operate as *res judicata* in a subsequent suit brought to try the same question in a Civil Court between the same parties.

In the case of *Hurri Sunker Mookerjee* v. *Muktaram Patro* (1) it was held by a Full Bench of this Court that a judgment by a Collector in a suit under Act X of 1859 declaring the plaintiff entitled to assess rent upon land alleged by the defendant to be lakheraj is not conclusive in a subsequent suit between the same parties for arrears of rent under Bengal Act VIII of 1869. That decision was based on the principle that the decision of a Revenue Court on a question of title is no bar to the trial of the same question by the ordinary Civil Courts.

But by section 107 of the Bengal Tenancy Act the Revenue Officer is directed to adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and it is provided that his decision in every such proceeding shall have the force of a decree. It appears to us that these words were intended to invest him for the trial of these disputes with the powers of a Civil Court, and to give

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to his decision the binding force of a decree of a Civil Court. This view is borne out, as it seems to us, by the two following sections. Section 108 gives the right of appeal against such decision to a special Judge to be appointed under that section, and of second appeal to the High Court. Section 109 distinguishes between disputed and undisputed entries in the record, and while laying down that undisputed entries shall be presumed to be correct until the contrary is proved, appears to treat the decision of disputed entries under sections 106—108 as final.

We must confess that it is with considerable hesitation that we arrive at this result. The language of the Act is unfortunately vague; but we cannot suppose that it was the intention of the Legislature after providing for the trial of disputes regarding entries in the record of rights by the Code of Civil Procedure and by a special Appellate Court, that such disputes should be liable to be reopened before the ordinary Civil Courts of the country.

We are of opinion, therefore, that the suit of the Roys was barred by section 13 of the Code of Civil Procedure.

Appeal No. 738 must be allowed, the decrees of the lower Courts are reversed and the suit dismissed with costs in all Courts.

In appeal No. 691 we think that no ground for second appeal exists, and we accordingly dismiss it with costs.

Appeal No. 738 *allowed.*

Appeal No. 691 *dismissed.*

C. D. P.

FULL BENCH.

Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Prinsep, Mr. Justice Pigot, Mr. Justice O'Kinealy, and Mr. Justice Ghose.

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RADHA PROSAD SINGH (PLAINTIFF) *v.* BAL KOWAR KOERI (DEFENDANT).*

Cess—Illegal Cess—Asul and Abwab—Rent—Bengal Tenancy Act (VIII of 1885), ss. 3(5), 74—*Reg. VIII of* 1793, *ss.* 54, 55, 57, 58, 61—*Reg. V. of* 1812, *ss.* 2, 3—*Second Appeal, grounds of—Code of Civil Procedure (Act XIV of* 1882), *s.* 584.

* Full Bench reference on special Appeal No. 2101 of 1887 against the decree of the District Judge of Shahabad, dated the 25th April 1887, affirming the decree of the Munsif, First Court, Buxar, dated 30th December 1886.