

been argued before us that, in the view we take of the law, great injustice may be done in certain cases; as, for instance, if an auction-purchaser of an undivided share in an estate, who is unable to obtain information regarding the property either from the tenants or from his co-sharers, is debarred from applying for a determination of the particulars of the property under section 158. It is pointed out that such cases may occur even where no dispute exists as to the management of the property such as would enable a co-sharer to apply for the appointment of a common manager under section 93 of the Act. This may be so, but the language of section 188 seems to us to be clear and explicit, and we do not feel ourselves at liberty to overlook its provisions or to strain it in any way.

The appeal must be dismissed with costs.

Appeal dismissed.

C. D. P.

1890
 MOHEEB
 ALI *alias*
 DUMMUR
v.
 AMBER RAI.

CIVIL REFERENCE.

Before Mr. Justice Tottenham and Mr. Justice Ali.

MAKHAN LALL DATTA (PLAINTIFF) *v.* GORIBULLAH SARDAR
 (DEFENDANT).*

1890
 February, 5.

Mofussil Small Cause Court—Jurisdiction—Suit for the recovery of damages for the use and occupation of land.

A suit for the recovery of damages for the use and occupation of land is within the jurisdiction of the Mofussil Small Cause Courts.

THIS was a reference from the Judge of the Court of Small Causes at Sealdah.

The reference was as follows:—"The plaintiff sues for Rs. 20 in the shape of damages for use and occupation of land at the rate of Rs. 7 a month from Falgoon 1295 (February-March 1889) to Bysack 1296 (April-May 1889). It is alleged that the defendant occupied the land for the aforesaid period without the plaintiff's consent, and used its earth for making well sidings.

"The defendant contests the plaintiff's title to the land, alleging that he has leased it from one Peary Mohun Sur, the purchaser;

* Civil reference No. 1A of 1890 made by Baboo K. N. Mukerjee, Judge of the Court of Small Causes, Sealdah, dated the 11th of December 1890.

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and contends that this Court has no jurisdiction to entertain this suit, inasmuch as it comes under clauses 4 and 11 of Schedule II of the Provincial Small Cause Court Act.

“Clause 4 of Schedule II relates to a suit for the possession of immoveable property or for the recovery of an interest in such property. I don't think by the words “interest in such property” the Legislature meant the proceeds of immoveable property. In the *mofussil*, suits for damages for misappropriation of crops are generally brought in the Small Cause Courts without any objection. If the Small Cause Courts have jurisdiction to entertain suits for damages for forcible appropriation of crops, I see no reason why suits for “*wasilat*” and suits for damages for use and occupation of land should be excluded from the jurisdiction of the Small Cause Court.

“Clause 11 provides for suits for the determination or enforcement of any other right to or interest in immoveable property. I think suits for easements, &c., arising from immoveable property are meant by this clause. I don't think it is in the contemplation of the Legislature that suits for damages for use and occupation of land, suits for *wasilat*, and suits for damages for wrongful appropriation of crops, are to be brought in the ordinary Civil Courts under this clause. Clause 35, which relates to suits for compensation, does not exclude such cases from the jurisdiction of the Small Cause Courts.

“It appears in evidence that the defendant had previously held this identical land under the plaintiff and paid him rent. He has utterly failed to prove that Peary Mohan Sur had purchased the land. The contention as to plaintiff's title is simply groundless. The determination of this case does not depend upon the proof or disproof of a title to immoveable property or other title which this Court cannot finally determine. I am therefore of opinion that the Small Cause Court has jurisdiction to entertain this suit. But as I am doubtful as to whether the view I have taken is correct, I have thought it proper to refer the following point for an authoritative ruling of the High Court:—

“Whether the Small Cause Courts in the *mofussil* have jurisdiction to entertain suits for damages for use and occupation of lands.”

No one appeared on the reference.

The opinion of the High Court (TOTTENHAM and ALI, JJ.) was as follows:—

We are of opinion that the Small Cause Court has jurisdiction in this case. Clearly neither Article 4 nor Article 11 of the Schedule excludes it, nor does Article 35.

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FULL BENCH.

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

RUJJUB ALI CHOPEDAR (PLAINTIFF) v. CHUNDI CHURN
BHADRA AND OTHERS (DEFENDANTS).

1890
February 7.

*Mahomedan Law—Pre-emption—Ceremonies of “immediate demand” and
“demand with invocation.”*

When a person claiming a right of pre-emption has performed the *talab-i-mawasibat* in the presence of witnesses, but not in the presence either of the seller or of the purchaser, or on the premises, it is necessary that, when performing the *talab-i-ishad*, he should declare that he has made the *talab-i-mawasibat*, and at the same time should invoke witnesses to attest it.

Jadumandun Singh v. Dulput Singh (1) affirmed, *Nunda Pershad Thakur v. Gopal Thakur* (2) overruled.

THIS was a suit claiming a right of pre-emption. The plaintiff on hearing of the sale had performed the ceremony of *talab-i-mawasibat*, or immediate demand, in the presence of witnesses, but not in the presence either of the seller or of the purchaser, or on the land itself. He then proceeded to perform the ceremony of *talab-i-ishad*, or affirmation, in the presence of the vendor and purchaser, but did not at the same time declare that he had

* Full Bench Reference on appeal from Appellate Decree No. 902 of 1888 against the decree of Babu Trailukhya Nath Mitter, Subordinate Judge of Furridupur, dated the 31st January 1888, reversing the decree of Babu Khetter Nath Dutt, Second Munsiff of Chikandi, dated the 24th September 1886.

(1) I. L. R., 10 Calc., 581.

(2) I. L. R. 10 Calc., 1008.