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 v.
 DURGA
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 DAS.

In the result then the appeal by the plaintiff, so far as the claim for an injunction is concerned, will be disallowed, and in so far as it relates to the refusal by the lower Court to set aside the second pottah, his appeal will be allowed, and the appeal by the defendant so far as regards the setting aside the first pottah will be allowed, and as regards every thing else both appeals will be dismissed. The costs, I think, must be in proportion to the success of the parties.

*Appeal as to injunction dismissed.
 In other respects in part allowed.*

T. A. P.

Before Mr. Justice Prinsep and Mr. Justice Benajee.

1890
 February 3.

NILMONI CHUCKERBUTTI AND OTHERS (PETITIONERS) v. BYKANT NATH BERA (OPPOSITE-PARTY).*

Bengal Tenancy Act (VIII of 1885), s. 130, sub-section 2—Record of Proprietor's land as private land—Grounds for determining land to be private—Evidence.

In enacting sub-section 2 of s. 120 of the Bengal Tenancy Act, the Legislature had before it the attempts which might be expected on the part of landlords to frustrate the intention of the Legislature, as asserted in the Draft Bill laid before the Council for consideration, to extend the occupancy-rights of tenants before the measures then declared to be in contemplation became law; and therefore the particular date, the 2nd day of March 1883, the date on which the Draft Bill was published in the *Gazette*, and leave was obtained to introduce the Bill into the Council, was declared to be the latest date on which there should be free action on the part of zemindars to assert their private rights, so as to prevent the accrual of special tenant rights. From the wording of that sub-section, it was intended that, in determining whether land is the private land of the proprietor, regard should be had to any declaration made before the 2nd March 1883 by the landlord, and communicated to the tenants, in respect to the reservation of the proprietor's right over the land as his private land: the words "any other evidence that may be produced" in that sub-section mean, therefore, any other evidence tending in the same direction that may be produced to show the assertion of any title on the part of the proprietor and communicated to the tenant before that date.

* Appeal from Appellate Decree No. 79 of 1889, against the decree of J. Pratt, Esq., Judge of Midnapore, dated the 6th of September 1888, affirming the decree of Baboo Chandī Das Ghose, Deputy Collector of Tumlak, dated the 9th of March 1888.

IN this case the petitioners applied, under s. 118 of the Bengal Tenancy Act, to the Collector to have certain lands recorded as their private lands; and the opposite-party filed a petition of objection to the grant of such application. The only material question was as to the kind of evidence admissible to show the land to be the private land of the petitioners. For this, all necessary facts are sufficiently stated in the judgment of the Court.

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The application was rejected by both the lower Courts, and the petitioners appealed to the High Court.

Baboo *Nilmadhub Bose* for the appellants.

Baboo *Dwarkanath Chuckerbutty* for the respondents.

The judgment of the Court (PRINSEP and BANERJEE, JJ.) was as follows:—

This is a matter under Chapter XI of the Bengal Tenancy Act in which the proprietor of certain *bromattar* lands sought to obtain from the revenue officer a record that the lands were his private lands.

The case in the lower Court was presented to the District Judge in appeal as coming within s. 120, sub-section 1 (b), and was so dealt with. The District Judge found that no village usage was established, and he accordingly affirmed the order of the Deputy Collector rejecting the petitioners' application. In the appeal before us, it has been contended that the real character of the case has been misunderstood, and that the case should have been dealt with under sub-section (2). Now, under that sub-section, the law allows three matters to be taken into consideration in determining whether the land should be recorded as the proprietor's private land. The first is local custom; the second is whether the land was, before the 2nd day of March 1883, specifically let as the proprietor's private land; and the third is any other evidence that may be produced. It is contended that there is some other evidence to establish the proprietor's right to have it recorded as his private land. That evidence has been placed before us, and consists of proceedings in two matters in 1885 and 1886, relating to the settlement of certain *lhas* mehals within which these lands were situate, and the recording of these

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lands in the names of the appellants on claims being set up by them that the lands were their *nij jote bromallar* lands. On this assertion of title, it would seem that notices were issued on the tenants, and the lands were so recorded in the settlement-proceedings. It is now contended that we should remand the case to the lower Appellate Court, in order that it may receive and consider this evidence as bearing on sub-section 2, s. 120. The District Judge in dealing with the case under sub-section 1 (b) has held that that documentary evidence was irrelevant, and, in our opinion, he was right in so regarding it. Then, the question is whether it might properly be considered under sub-section 2, s. 120. It seems to us that in enacting that sub-section, the Legislature had before it the attempts which might be expected on the part of landlords to frustrate the intention of the Legislature, as asserted in the Draft Bill laid before the Council for consideration, to extend the occupancy-rights of tenants before the measures then declared to be in contemplation became law; and therefore the particular date, 2nd day of March 1883, the date on which the Draft Bill was published in the *Gazette*, and leave was obtained to introduce the Bill into the Council, was declared to be the latest date on which there should be free action on the part of zemindars to assert their private rights, so as to prevent the accrual of special tenant rights. It was accordingly declared that it was a material point, in the consideration of such a matter as is now raised in appeal before us, whether the particular lands were, before the 2nd day of March 1883, specifically let as the proprietor's private lands. From this, we may take it, that it was intended that regard should be had to any declaration made before that date by the landlord, and communicated to the tenants in respect to the reservation of the proprietor's right over the land as his private land. In this view, we think that the following words in that sub-section "any other evidence that may be produced" must mean any other evidence tending in the same direction that may be produced to show the assertion of any title on the part of the proprietor, and communicated to the tenant before that date. But the documentary evidence on which the appellants' pleader relies in this case is of a much later date, and, therefore, in our opinion, can have no bearing on

a proper consideration of the matter now before us. The proceedings are all of dates not only later than that mentioned in sub-section 2, s. 120, but even later than that of the passing of the Bengal Tenancy Act. We think, therefore, that we should not be justified in remanding this case, so as to prolong these proceedings. The appeal must, therefore, be dismissed with costs.

J. V. W.

*Appeal dismissed.**Before Mr. Justice Trevelyan and Mr. Justice Beverley.*

ISWARI PERSHAD NARAIN SAHI, LUNATIC, REPRESENTED BY HIS MOTHER, GUARDIAN AND NEXT FRIEND BHUPESWAR KOER (PLAINTIFF) v. CROWDY AND OTHERS (DEPENDANTS)*

1890.

February 5.

Bengal Tenancy Act (VIII of 1885), Sch. III Art. (2)—Limitation for rent-suit—Rent payable under a lease—Registered lease.

The Bengal Tenancy Act (VIII of 1885) prescribes one period of limitation for all suits for rent brought under its provisions.

Article 2 of the third Schedule of that Act includes a suit to recover arrears of rent payable under a lease, and there is no distinction as to the form of the lease or as to whether it is registered or not.

Umesh Chunder Mondul v. Adarmoni Dasi (1), and Vythilinga Pillai v. Thetchanamurti Pillai (2) distinguished.

THIS was a suit to recover arrears of rent under a registered ticca kabuliyat.

Under the kabuliyat, which was executed on the 21st of September 1880, and duly registered, the proprietors of the Belsand Concern held in ticca the plaintiff's half-share in the 8 annas divided putti of Mouza Parsurampore, Pergunnah Mahila, in the District of Mozufferpore, for a term of seven years from 1288 to 1294 (1880-1886) inclusive at an annual *jumma* of Rs. 2,000, payable in three instalments of Rs. 1,000 in Kartick, Rs. 500 in Cheyt, and Rs. 500 in Joisto. It was also provided in the kabuliyat that upon the expiration of the said term of seven years the proprietors should pay rent up to the 10 annas instalment in 1295 for the *zerut* lands in the plaintiff's putti, on which there might be the indigo-plantation of the Belsand Concern, and that they should

* Appeal from Original Decree No. 285 of 1888, against the decree of Baboo Grish Chunder Chatterjee, Subordinate Judge of Tirhoot, dated the 6th of July 1888.

(1) I. L. R., 15 Calc., 221.

(2) I. L. R., 3 Mad., 76.