

Before Mr. Justice O'Kinealy and Mr. Justice Hall.

PRIAG NATH SAH DEO (PLAINTIFF) v. MURA MUNDA AND
OTHERS (DEFENDANTS.)*

1896
December 21.

Appeal—The Chutia Nagpur Landlord and Tenant Procedure Act (Bengal Act I of 1879), sections 37, clause (4), 39, 137, 139 and 144—Rent, Suit for—Appeal in cases where the aggregate amount claimed is above Rs. 100.

An appeal lies to the Judicial Commissioner, and not to the Deputy Commissioner, from a decree passed by the Deputy Collector, in a suit for rent, where the aggregate amount of rent claimed under section 39, Bengal Act I of 1879, is above Rs. 100.

THIS appeal arose out of an action brought by the landlord, in the Court of the Deputy Collector of Ranchi, to recover rent against a number of *rai-yats*. The aggregate amount of rent claimed was above Rs. 100, but the amount recoverable from each tenant was below Rs. 100. The learned Deputy Collector decreed the suit of the plaintiff. Some of the tenants appealed to the Judicial Commissioner, who set aside the decision of the lower Court, so far as the appellants before him were concerned. From this decision the plaintiff appealed to the High Court, on the ground that the appeal from the decree of the Deputy Collector lay to the Deputy Commissioner, and that the Judicial Commissioner had no jurisdiction to hear it.

Babu *Srinath Das* and Babu *Karuna Sindhu Mookerjee* for the appellants.

Dr. *Asutosh Mookerjee* for the respondents.

Babu *Srinath Das*.—Under sections 137 and 139 of Bengal Act I of 1879, the appeal lies to the Deputy Commissioner, if the amount sued for does not exceed Rs. 100. Although section 39 permits joinder of claims against different tenants for the purposes of determining the jurisdiction of the Appellate Court, the value of the suit ought to be determined by the amount claimed against each tenant.

Dr. *Asutosh Mookerjee* for the respondents.—Where separate

* Appeal from Appellate Decree No. 1024 of 1895, against the decree of F. Cowley, Esq., Judicial Commissioner of Chutia Nagpur, dated the 7th of January 1895, reversing the decree of Babu Krishna Kali Mookerjee, Deputy Collector of Ranchi, dated the 7th of January 1893.

1896
 PRIAG NATH
 SAH DEO
 v.
 MURA
 MUNDA.

claims against different tenants are joined under section 39, there is only one suit, and the amount sued for is clearly the aggregate amount claimed against the tenants collectively. If, as the appellant contends, the *forum* of appeal is determined by the amount claimed against a particular tenant, we may have the anomaly of an appeal by one tenant lying to the Deputy Collector, and that by another tenant from the same decree lying to the Judicial Commissioner. Under section 144, which contemplates an appeal from a judgment, the appeal lay to the Judicial Commissioner. Besides, under section 11 of the Suits Valuation Act, the appellant is not entitled to succeed without proving that he has been prejudiced.

Babu Srinath Das in reply.

The judgment of the High Court (O'KINEALY and HILL, JJ.) was as follows :—

This is an appeal from the decision of the Judicial Commissioner of Chutia Nagpur, dated the 7th January 1895.

It was first objected that no second appeal lay to this Court; but this objection was overruled some years ago. We think, therefore, that the objection fails.

Then it was argued, and that is the point upon which the appeal turns, that the appeal lay not to the Judicial Commissioner but to the Deputy Commissioner. The suit is of the nature mentioned in clause (4), section 37, and by section 39 several claims of that kind may be joined in one suit. It would appear, therefore, that the several claims as mentioned in the second clause of section 39 form one suit and one suit only.

We now come to determine to what Court the appeal lay. Section 137 says that in suits under clause (4) and certain other clauses of section 37, if tried and decided by a Deputy Commissioner, if the amount sued for, or the value of the property claimed does not exceed one hundred rupees, the judgment of the Deputy Commissioner shall be final, except under certain conditions which do not arise in this case. Section 139 refers to appeals from the decisions of a Deputy Collector. And then comes section 144 which provides as follows : "In all suits other than those in which, when tried and decided by a Deputy Commissioner, the judg-

ment of the Deputy Commissioner is declared to be final, or when tried and decided by a Deputy Collector, an appeal is allowed to the Deputy Commissioner, an appeal from the judgment of the Deputy Commissioner or Deputy Collector shall lie to the Judicial Commissioner of the Division, unless the amount or value in dispute exceed five thousand rupees, in which case the appeal shall lie to the High Court." Bearing in mind that we are of opinion that a suit under section 39, although it includes a number of claims, is one suit, and that under section 137 the judgment, in such a suit as this, is not final, we think, looking at the somewhat obscure language of section 144, that the appeal in this case lies to the Judicial Commissioner, the aggregate amount of the claims being more than one hundred rupees.

We, therefore, dismiss this appeal with costs.

s. c. G.

Appeal dismissed.

Before Mr. Justice Banerjee and Mr. Justice Rampinl.

SURJA KANTA ACHARJEE (PLAINTIFF) *v.* BANESWAR
SHAHA AND ON HIS DEATH HIS SON HEIR AND LEGAL REPRESENTATIVE
JOTINDRA LAL SHAHA, BY HIS MOTHER AND GUARDIAN KISSORI
DASI (DEFENDANT).²

1896
December 7.

Evidence—Rent Receipts, Proof of genuineness of—Onus of proof—Bengal Tenancy Act (VIII of 1885), section 50—Suit for enhancement of rent—Appellate Court, Power of.

In a suit for enhancement of rent the defendant produced certain *dakhilas* and deposed to having received them on payment of rent. *Held*, that this was sufficient evidence to prove them.

Held, further, that it was perfectly open to the lower Appellate Court, which had to deal with the facts of the case, to say whether taking the receipts, which extended over a number of years together, and having regard to the fact that the receipts did not specify the years to which the amounts related, the amounts paid in any particular year were partly for the rents of that year and partly for the arrears due in respect of previous years.

To entitle the plaintiff to a decree for enhancement of rent on the ground of an alteration in the area of the defendant's holding, the plaintiff must show that the defendant is holding lands in excess of what he is paying rent for,

² Appeal from Appellate Decree No. 757 of 1895, against the decree of L. Palit, Esq., Offg. District Judge of Rajshahye, dated the 14th of January 1895, affirming the decree of Babu Adetya Chandra Chuckerbutty, Munsif of Nawabgunge, dated the 28th of December 1893,

1896
PRIAG NATH
SAR DEO
MURA
MUNDA.