Before Mr. Justice Hill and Mr. Justice Brett.

1901
March 12.

DURGA CHURN LAW
v.
HATEEN MANDAL.*

Res Judicata—Bengal Tenancy Act (VIII of 1885) ss. 104, cl. (2), 107—Civil Procedure Code (Act XIV of 1882) s. 13.

During the preparation of record-of-rights of an estate under section 103 of the Bengal Tenancy Act by a Settlement Officer, the landlord put in a petition under section 104, clause (2) of the Act for settlement of rent of a certain tenant's holding. The tenant, notwithstanding the fact that notice was served upon him, did not adduce any evidence, and the Settlement Officer decided that the tenant was an occupancy raiyat, and fixed a fair and equitable rent for the holding. Against this decision of the Settlement Officer, no appeal was preferred to the Special Judge. Subsequently a suit was brought in the Civil Court by the tenant to have the class to which he belonged and the nature of his holding, *i.e.*, whether the rent was enhancible or not, determined. The defence of the landlord was that, having regard to the decision of the Settlement Officer, the question could not be re-opened.

Held, that under the provisions of section 104, clause (2), and section 107 of the Bengal Tenancy Act, the decision of the Settlement Officer amounted to a decree, and the matters determined by that decision could only be re-opened on an appeal to the Special Judge. As no appeal was preferred, the decision became final, and the questions decided in that could not be re-opened in this suit.

THE defendants, Durga Churn Law and others, appealed to the High Court.

These appeals arose out of two suits brought by the plaintiffs for declarations that they were permanent tenure-holders, and that their tenures were not liable to enhancement. The allegations of the plaintiffs were that they were permanent tenure-holders of certain lands in Taraf Chourashi of which the defendants were the proprietors; that the tenures were in possession of the plaintiffs and their predecessors from before the time of the Permanent Settlement, and therefore the rents were not liable to enhancement;

* Appeals from orders Nos. 166 and 167 of 1899, against the order of Babu Rajendra Coomar Bose, Subordinate Judge of 24-Parganas, dated the 9th of March 1899, reversing the order of Babu Srigopal Chatterjee, Munsif of Baraset, dated the 24th of September 1898.

that the defendants applied to the Settlement Officer, 24-Parganas, in the course of a settlement proceeding, under section 104, clause (2) of the Bengal Tenancy Act, for settlement of rents of the tenures, they got an *ex-parte* decree by adducing false evidence, and without serving notices on the plaintiffs; that the Settlement Officer decided that the plaintiffs were occupancy raiyats, and that their holdings were liable to enhancement and fixed the rents; that the decision of the Settlement Officer was *ultra vires*, and hence these suits were brought. The defence mainly was that the decision of the Settlement Officer was not *ultra vires*, and that the questions raised were *res judicata*. The learned Munsif dismissed the plaintiffs' suits, holding that the decision of the Settlement Officer was not *ultra vires*, and that, having regard to section 107 of the Bengal Tenancy Act, it had the force of a decree, and therefore the questions raised in the case were *res judicata*. He also found that the plaintiffs were present before the Settlement Officer, but went away when the case was taken up without making any defence. On appeal, the learned Subordinate Judge, Babu Rajendra Coomar Bose, reversed the decision of the First Court, and remanded the suits for determination of the questions on the merits.

Sir Griffith Evans, *Babu Baikunt Nath Pal*, *Babu Debendra Nath Ghose*, and *Babu Charu Chunder Ghose* for the appellants.

Babu Nil Madhub Bose and *Babu Shib Chunder Palit* for the respondents.

1901
March 12.

HILL and BRETT JJ. These appeals have been preferred against the orders passed by the Subordinate Judge of the 24-Parganas setting aside the order of the Munsif of Baraset dismissing the suits brought by the plaintiffs respondents and remanding them to the Munsif for retrial on the merits. The suits, as well as the appeals, were heard together and were decided by single judgments. These two appeals have been heard together and will be governed by this judgment.

The appellants are the zemindars of Taraf Chaurashi, Thana Howrah, and a survey of the lands of that estate appears to have been made under the provisions of the Bengal Tenancy Act. In

1901

DURGA CHURN LAW v. HATEEN MANDAL.

the course of the proceedings, the appellants, the landlords, put in petitions to the Settlement Officer, under section 104 of the Bengal Tenancy Act, praying that he would, under the second clause of that section, settle fair and equitable rents in respect of the lands held by the respondents as tenants. Similar applications were made with regard to other tenants.

The Settlement Officer held proceedings under the second clause of section 104, Bengal Tenancy Act, and on the 6th August 1896 and the 25th July 1896 delivered his decisions in the case affecting the respondents in appeals Nos. 166 and 167, respectively. It appears that notices were duly served on the respondents in those cases, but that they would not offer any evidence. No appeals were preferred against the decisions in those cases.

The suits out of which the present appeals arise were filed by the respondents in appeals 166 and 167 on the 11th November 1897, and the 17th January 1898, respectively. The claim in each case was substantially the same, viz., to have the class of tenants to which the plaintiff belonged determined and the nature of his holding, *i.e.*, whether the rent was enhancible or not. In each case the plaintiff claimed to be a permanent tenure-holder, holding lands within specified boundaries on a rent permanently fixed, which had been settled in gross, and not according to any particular rate on the area of the land, and which was not liable to enhancement. The correctness of the decision of the Settlement Officer in the case of each in the proceedings taken under the second clause of section 104 of the Bengal Tenancy Act was impugned, and the relief prayed for in each was a declaration that the plaintiff was a permanent tenure-holder, and that his jama was not liable to enhancement; that the finding of the Settlement Officer was erroneous, *ultra vires* and void, and that it be set aside; and that it be declared that the plaintiff's rent was not liable to be enhanced, notwithstanding that the land had been found on measurement to be a little more (apparently) than that settled with him at the time of the original settlement.

The Settlement Officer, it may be noted, found in the case of each of the respondents that he was an occupancy raiyat, and that

the prevailing rate of rent was Re. 1 per local bigha, and in consequence of excess land held by them he fixed the fair and equitable rent for the respondents in appeal 166 at Rs. 34-14-5 instead of Rs. 16. 14*a*. 5*g*. 2*k*. as admitted, and for the respondent in appeal No. 167 at Rs. 33-7-2.

The Munsif dismissed both the suits, holding that the questions of the settlement of fair and equitable rent and the status of the plaintiffs had been decided by the Settlement Officer, that his decisions had the force of decrees, and that as they had become final, the matters were *res judicata* between the parties. No allegation of fraud to invalidate the decision of the Revenue Officer was advanced.

The Subordinate Judge on appeal has reversed the findings of the Munsif, and has remanded the suits for trial on the merits. His judgment is not very clear, and he does not appear to have had before him the decisions of the Settlement Officer in the proceedings under section 104 of the Bengal Tenancy Act. He appears to have held that as there was no dispute as to the entries made in consequence of the decision of the Settlement Officer under section 104 of the Bengal Tenancy Act, and as there was no decision by him of any such dispute under section 106 of the same Act, and as the Settlement Officer had no power to settle rents under section 112 of the Act, therefore his decision could not be held to bar the suit of the plaintiffs or to make the matter in issue in these suits *res judicata* between the parties.

In these appeals, however, the learned Counsel for the appellants has pointed out, and we think quite correctly, that the Subordinate Judge entirely misconceived the nature of the proceedings before the Settlement Officer. They were proceedings taken under the second clause of section 104 of the Bengal Tenancy Act in consequence of applications made by the landlord for a settlement of the rent. Such decision had, under section 107 of the Bengal Tenancy Act, the effect of decrees, and everything necessary to be decided for the purpose of arriving at the decisions in those cases must be held to have been decided in them. It was necessary to determine the status of the tenant in order to decide

1901

DURGA CHURN LAW v. HATEEN MANDAL.

what was the fair and equitable rent, and that question having been determined, it is now *res judicata* between the parties and cannot be re-opened in the present suits. The ruling relied on by the Subordinate Judge in the case of *The Secretary of State for India in Council* v. *Kajimuddy* (1) has no bearing on the present case. In that case neither the landlord nor the tenant applied for a settlement of rent. There was thus, as the Judges in that case remarked, no suit before the Settlement Officer in the proper sense of the term. The landlord was no party to the proceedings. There was no plaintiff and no defendant arrayed against each other. The order was not passed in a suit or in any contest between the landlord and tenant. All that appears is that some local enquiry was held and the objection was disallowed. For these reasons the learned Judges held that the decision of the Settlement Officer settling the tenants' rents under section 104 could not operate under section 107 of the Tenancy Act as a final decree estopping the plaintiff from having the same matter tried by a regular Civil Court. In this case the proceedings were taken on the application of the landlord. The defendants had an opportunity to appear and contest the application. It was their own fault that they did not contest it.

It is not now open to this Court in appeal to go into the decision of the Settlement Officer and to determine what direct issues he framed or decided. It is sufficient to say that his decisions purport to determine, and in fact determined, the two essential points which are raised in these suits, viz., the status of the plaintiffs as tenants and the fair and equitable rent due on their holdings. The ruling in the case of *Kailash Mondul* v. *Baroda Sundari Dasi* (2) is not applicable to the present case.

Under the provisions of section 104, clause (2), and section 107 of the Bengal Tenancy Act, the decisions of the Settlement Officer amounted to decrees, and the matters determined by those decisions could only be re-opened on an appeal to the Special Judge. As no appeal was preferred, the decisions have become final, and the questions decided in them cannot be re-opened in these suits.

(1) (1895) I. L. R. 23 Calc. 257. (2) (1897) I. L. R. 24 Calc. 711.

1901

DURGA CHURN LAW v. HATEEN MANDAL.

The orders of the Subordinate Judge in both cases are accordingly set aside, and the judgment and decree of the Munsif dismissing the suits of the plaintiffs with costs is restored.

These appeals are decreed with costs.

S. C. G. *Appeal allowed.*

Before Mr. Justice Rampini and Mr. Justice Pratt.

SERAJUL HUQ KHAN
v.
ABDUL RAHAMAN. *

1902
January 30.

Misjoinder of parties and causes of action—Civil Procedure Code (Act XIV of 1882) ss. 28 and 45—Suit by a purchaser of a property for possession against a person who dispossessed him, as also against the vendor for the refund of the purchase money, whether maintainable.

On a suit brought by the plaintiff for recovery of possession of land against defendant No. 1 (the person by whom the plaintiff was dispossessed) after declaration of his right as purchaser from defendant No. 2; for an order for the registration of the plaintiff's name under the Land Registration Act (VII of 1876); for mesne profits and also for a refund of the purchase money from the defendant No. 2 in case the plaintiff's claim against defendant No. 1 failed, the defence was that the suit was bad for misjoinder of parties and causes of action.

Held that the suit was not bad for misjoinder of parties and causes of action.

Hanuman Kamat v. *Hanuman Mandur* (1) and *Rajdhur Chowdhry* v. *Kali Kristna Bhattacharjya* (2) referred to.

THE plaintiff, Serajul Huq Khan, appealed to the High Court.

This appeal arose out of an action brought by the plaintiff for recovery of possession of land, as also for refund of purchase money, against defendants Nos. 1 and 2. The allegation of the plaintiff was that defendant No. 2 sold the disputed land to him on a proper consideration and that he obtained possession of the said land; that defendant No. 1 dispossessed him of the said land; and hence the suit was brought for recovery of possession after

* Appeal from order No. 417 of 1900, against the order of Babu Manmotho Nath Chatterjee, Subordinate Judge of Dacca, dated the 19th of September 1900, reversing the order of Babu Hari Chunder Sen, Munsif of Dacca, dated the 18th of November 1899.

(1) (1891) I. L. R. 19 Calc. 123. (2) (1882) I. L. R. 8 Calc. 963.