Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice Banerjee.

1900
July 18, 19, 26 & 31.

HARRO KUMARI CHOWDHRANI AND OTHERS (PLAINTIFFS) *v.* PURNA CHANDRA SARBOGYA AND OTHERS (DEFENDANTS).*

Landlord and tenant—Disturbance by landlord of peaceful possession—Suspension and apportionment of rent.

A landlord is not entitled to recover rent for the lands in the possession of a tenant, who holds a tenure under a lease which reserves rent at a certain rate per *bigha*, when he has dispossessed the tenant from the other lands of the tenure, inasmuch as it cannot be said that each bigha of land is separately assessed and separately chargeable with rent.

Dhunput Singh v. *Mahomed Kazim Ispahain* (1) distinguished.

THIS appeal arose out of a suit brought by the plaintiffs to recover possession of certain land after eviction of the defendants therefrom or in the alternative to recover rent. The allegation of the plaintiffs was that they, as owners of a taluq and osat taluq, granted on the 8th Chaitra 1277 B. S. (21st March 1871) to the father of the defendants an amalnama for the disputed lands; that according to the terms of the said amalnama, neither the defendants' father nor the defendants cut the jungle and brought the land under cultivation; and that they served a notice on the defendants under s. 155 of the Bengal Tenancy Act.

The defence, *inter alia*, was that the suit was not maintainable, not having been brought in proper form; that the nim osat taluq could not be put an end to by a notice; that no notice was served upon the defendants; that the plaintiffs having dispossessed the defendants from land they had brought under cultivation could not sue for rent or damages; and that the boundaries of the defendants' nim osat taluq not having been correctly set out the suit could not proceed.

The Court of First Instance dismissed the suit, holding that the plaintiffs were not entitled to *khas* possession as they had failed

* Appeal from Original Decree No. 190 of 1898, against the decree of Babu Debendra Lal Shome, Subordinate Judge of Backergunge, dated the 10th of March 1898.

(1) (1896) I. L. R., 24 Calc., 296.

o prove service of notice under s. 155 of the Bengal Tenancy Act, and that the plaintiffs having dispossessed the defendants from a portion of the land demised their claim for rent was not tenable.

Against this decision the plaintiffs appealed to the High Court.

1900. JULY 18, 19, 26, 31. Mr. *C. P. Hill*, Babu *Basanta Kumar Bose*, and Babu *Gyanendra Mohun Dass*, for the appellants.

Babu *Srinath Das*, and Babu *Brojo Lal Chuckerbutty*, for the respondents.

Cur. adv. vult.

1900. AUGUST 16. The judgment of the High Court (MACLEAN, C. J., and BANERJEE, J.) so far as is material to this report was as follows :—

It remains now to consider the third and last contention of the appellants. It is argued for the appellants, that as the lease to the defendants reserves rent at a certain rate per bigha, and not a lump sum, as the rent of the taluq, they are bound to pay rent for the lands in their possession, notwithstanding that they have been dispossessed by their landlords from other lands of their tenure, and in support of this contention the case of *Dhunput Singh* v. *Mahomed Kazim* (1) is cited. That case, in our opinion, is, however, quite distinguishable from the present. There the case comprised several mouzahs or villages, and though they were granted in putni as a single tenure, the rent of each village was separately specified, and it was held that the landlord, in that state of things, was not debarred from recovering rent for some of the villages, merely because he had dispossessed the putnidar from the rest. But we do not think it can reasonably be said that each bigha of land is separately assessed and separately chargeable with rent in this case, in the sense in which each village was considered separately assessed and separately chargeable in the case cited. On the contrary, that case is rather an authority in favour of the defendants ; for the learned Judges in their judgment say, after considering various English and Indian cases bearing on the point : "The principles to be gathered from these cases are *first* that, where the act of the landlord is not a mere trespass, but something of a grave character, interfer-

(1) (1896) I. L. R., 24 Calc., 296.

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ing substantially with the enjoyment by the tenant of the property demised to him, there is a suspension of rent during such interference, though there may not be an actual eviction. And *second* that, if such interference be in respect of even a portion of the property, there should be no apportionment of the rent, the whole rent being equally chargeable upon every part of the land demised." We may add that there is a further reason why a lessor should not be allowed to claim apportionment of rent when he has himself evicted his tenant, and that reason is: "That no man may be encouraged to injure or disturb his tenant in his possession, whom by the policy of the law he ought to protect and defend;" and that reason applies with special force to a case like the present, where the lease is one of jungle lands entailing much trouble and expense to bring them under cultivation. We are therefore of opinion that the third contention of the appellants must fail.

The result, then, is that the decree of the lower Court must be varied so far as it relates to the land lying to the north of the red line on the Amin's map, and down to the point E on the Matbaria *khal*, and there must be a declaration in the plaintiff's favour that these lands are not included in the *kabuliat*. Subject to such variation the decree of the Court below will be affirmed, and there will be proportionate costs of the suit and of this appeal.

S. C. G. *Decree varied.*

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Prinsep and Mr. Justice Hill.

1901
Feb. 5.

IN THE MATTER OF THE PETITION OF SUKALBUTTI MANDRANI.

SUKALBUTTI MANDRANI (PLAINTIFF) *v.* BABULAL MANDAR AND ANOTHER (DEFENDANTS 1ST PARTY).*

Appeal to Privy Council—Certificate as to fitness for appeal—Civil Procedure Code (Act XIV of 1882), s. 596—Concurrent findings of two Courts on questions of fact—Substantial question of law—Question of law not necessarily arising.

No appeal lies to the Privy Council from an appellate decree of the High Court, when there are concurrent findings of the High Court and of the

* Application for leave to appeal to H. M. in Council, No. 4 of 1901, in Appeal from Original Decree No. 8 of 1898.