Before Mr. Justice Stevens and Mr. Justice Pratt.

1900 *Augt.* 27, 29.

TROYLOKHYANATH BOSE AND OTHERS (PLAINTIFFS) *vs.* M. N. MACLEOD AND OTHERS (DEFENDANTS).*

Jurisdiction of Civil Court—Suit for possession and mesne profits—Bengal Tenancy Act (VIII of 1885 as amended by Bengal Act III of 1898), ss. 101 to 111A—Suit to settle disputes prior to completion of record of rights—Status of tenants—Civil Procedure Code (Act XIV of 1882), ss. 11, 12.

There is no legal bar to the maintenance of a suit in the Civil Court for possession and mesne profits by ejectment of the defendants from certain plots of land in respect of which a survey and preparation of a record of rights have been ordered under Chapter X of the Bengal Tenancy Act (VIII of 1885 as amended by Bengal Act III of 1898), in which record the defendants have already been recorded as tenants, when the plaintiff's objections to such record are still pending before the Revenue Officer and the record has not been finally published.

Achha Mian Chowdhry v. *Durga Churn Law* (1) distinguished.

THE plaintiffs purchased the proprietary rights in certain villages in the district of Durbhanga and proceeded to take direct possession of the same. They succeeded in doing so with the exception of certain plots of land, to which the defendants laid claim as tenants and refused to give up possession thereof. The plaintiffs thereupon instituted this suit for direct possession of those plots by ejectment of the defendants and also for mesne profits, alleging that the defendants had no *ryoti* or *kashtkari* rights in the said lands, and had no right to hold or retain possession of the same, and that the alleged lease under which the defendants claimed those plots was infructuous and conferred no rights upon them whatsoever. At the time when this suit was instituted a record of rights in respect of the aforesaid villages was in the course of preparation under Chapter X of the Bengal Tenancy Act (VIII of 1885 as amended by Bengal Act III of 1898) and the defendants had already been recorded as tenants of the lands in suit. The plaintiffs duly objected to that record, their objections were still pending in the Court of the Revenue Officer, and the record of rights had not then been finally published.

* Appeal from original decree No. 293 of 1899, against the decree of A. E. Staley, Esq., District Judge of Tirhoot, dated the 12th of August 1899.

(1) (1897) I. L. R., 25 Calc., 146.

1899

TROYLOKHYANATH BOSE v. MACLEOD.

The defendants, who were indigo planters, alleged that long previous to 1875 their predecessors had acquired the lands in suit and cultivated them in indigo and had tenant rights in them; that their predecessors' rights passed to them by a valid transfer, which was recognised by the predecessors-in-title of the plaintiffs; that the defendants had long been in peaceful possession of the lands in suit as tenants; and that the plaintiffs were only entitled to a fair rent for these lands, but not to eject the defendants. They further alleged that they had already been recorded as tenants of the lands in suit in the record of rights in the course of preparation under the Bengal Tenancy Act; that the record had not then been finally published; and that the plaintiffs' objection to those entries was pending in the Revenue Officer's Court at the time of the institution of this suit.

A preliminary objection having been raised that the Civil Court had no jurisdiction to entertain the suit, the District Judge held that a determination of the status of the defendant's tenancy was the main contention between the parties, and on that depended all other issues; that as the proceedings which would determine the status of the defendants were pending in the Revenue Officer's Court, the present suit was barred under s. 111 of the Bengal Tenancy Act; and that since he was debarred from determining the defendants' status he could not proceed to the other issues. He further held that the suit was barred under s. 12 of the Code of Civil Procedure. He accordingly dismissed the suit with costs, relying principally on the following cases: *Achha Mian Chowdhry* v. *Durga Churn Law* (1), *Madho Prakash Singh* v. *Murli Manohar* (2) and *Ledgard* v. *Bull* (3).

The plaintiffs appealed to the High Court.

1900, AUGUST 27. The *Advocate General* (The Hon'ble Mr. *J. T. Woodroffe*), Babu *Saroda Charan Mitter*, and Babu *Shorashi Charan Mitter* for the appellants.

The *Advocate General*.—The District Judge is wholly wrong in dismissing the suit on the preliminary ground that the suit is

(1) (1897) I. L. R., 25 Calc., 146.
(2) (1883) I. L. R., 5 All., 406.
(3) (1886) I. L. R., 9 All., 191; L. R., 13 I. A., 134.

1900

TROYLOKHYA-NATH BOSE v. MACLEOD.

not maintainable in the Civil Court. The cases relied on by him are distinguishable from the present one. Here the suit is for possession by ejectment and for mesne profits, and such reliefs can only be granted by the Civil Court, and not by a Revenue Court.

These defendants have no right to be regarded as tenants; they claim the same right as is alleged to have been acquired by their predecessors;—the factory is not a corporation, and therefore it cannot be said that any number of men can hold the lands as its successors.

The District Judge is wrong in holding that a determination of the status of defendants' tenancy is the main contention between the parties; the suit is for possession and mesne profits, the provisions of s. 111 of the Bengal Tenancy Act have, therefore, no application to it. Nor can the provisions of s. 12 of the Code of Civil Procedure be applied to this case, the proceedings pending before the Revenue Officer not being for the same relief, namely, possession and mesne profits, as sought for in the present case, and the Revenue Court not having the power to grant such reliefs.

Babu *Saroda Charan Mitter* (on the same side)—The District Judge has decided the case on two grounds: (1) that the defendants are tenants within the purview of s. 111 of the Bengal Tenancy Act, and (2) that the proceedings pending before the Settlement Officer are a bar to the suit in the Civil Court.

The present suit being for possession and mesne profits, it cannot be said that the object of the suit was a determination of the status of the defendants as contemplated by s 111 of the Bengal Tenancy Act; the judgment of the District Judge based on s. 111 is therefore erroneous. S. 12 of the Code of Civil Procedure has also no application to the facts of this case. Since the Bengal Tenancy Act has been amended by Bengal Act III of 1898, there is a distinction made in the disposal of "objections" and "disputes" under the present rules of the Government. The present Act (s. 103 A) has expressly laid down the procedure to be followed now in the preparation of the final record of rights after the objections have been disposed of. The proceedings before the Settlement Officer had not arrived at a stage when a suit

could be instituted under s. 106 of the Bengal Tenancy Act (see Rampini's Bengal Tenancy Act, Edition 1899, p. 276): *Dengu Kazi* v. *Nobin Kissori Chowdhrani* (1).

The defendants, not having any valid right to the lands in question, are to be regarded as trespassers and the District Judge was wrong in holding that there was the relationship of landlord and tenant between the parties.

Mr. *P. O'Kinealy* and Mr. *C. Gregory* for the respondents. The District Judge was right in dismissing the suit. A person coming rightly into possession, but wrongly holding over, cannot be said to be a trespasser. The procedure under s. 103A of the Bengal Tenancy Act is for the purpose of preparing the record of rights, and until such record is finally prepared, nothing can interfere with the rights of the tenants and the Civil Court has no right therefore to interfere.

Under s. 111A. of the Tenancy Act no suit can be brought during the preparation of the record of rights and the framing of the same. Under s. 103 of the Act the defendants were recorded as tenants and there was an objection to the record by the plaintiffs which is still pending before the Revenue Officer. The provisions of s. 109 of the Act apply to the whole of the record of rights as much as to any of its parts; under s. 111 no suit can be brought in a Civil Court interfering with the "framing" of the record of rights.

Babu *Saroda Charan Mitter* in reply:—The dispute in the case is not with reference to the alleged lease, but to the plots of land claimed by the defendants irrespective of the lease. The question really is whether the proceedings of the Revenue Officer are final and a bar to the institution of a suit like the present one. S. 103 of the Act goes to shew that there is no finality in the record of rights as published;—it raises only a presumption to the correctness of the entries therein, and there being this record, it would be for the plaintiffs to prove that the defendants have no such rights to the lands as claimed by them. It was never the intention of the Legislature to oust the jurisdiction of the Civil Court in matters like these; there is nothing in s. 106 of the Act to shew that a party dissatisfied

(1) (1897) I. L. R., 24 Calc., 462.

1900

TROYLOKHYA-NATH BOSE v. MACLEOD.

with the record of rights may not institute a suit in the Civil Court. S. 111A also shews that the record of rights is not final; that section does not concern a suit of the present nature, the dispute in this case being about an entry in the record and not in respect of the "framing, publication, signing or attestation" of such a record. In the absence of an express provision of law the record of rights proceedings cannot bar a suit of this description.

Cur. adv. vult.

1900, AUGUST 29. The judgment of the High Court. (STEVENS and PRATT, JJ.) was delivered by

STEVENS, J.—The facts out of which this appeal arises, so far as it is necessary to state them for the purposes of the appeal, are as follows:—The plaintiffs are purchasers of the proprietory right in three villages. They sue the defendants for direct possession of certain plots of land in those villages and for mesne profits. The case of the defendants is that they have a tenant-right in those lands, and that their right was recognised by the predecessors in title of the plaintiffs. It is an admitted fact that at the time when the present suit was instituted an order had been made under section 101, chapter X of the Bengal Tenancy Act for a survey and a record of rights in respect of the villages in question; that the defendants had been recorded as tenants of the lands in suit; that the plaintiffs had objected, and that their objections were pending before the Revenue Officer.

A preliminary objection was raised by the defendants that the suit was not maintainable according to law. It appears from the judgment of the Lower Court that three provisions of law were cited in support of that objection, namely, *first* s. 104 H. (8) of the Bengal Tenancy Act as amended by the Bengal Tenancy Amendment Act of 1898; *secondly* s. 111; and, *thirdly* s. 111 A. The learned District Judge, as we think, quite rightly, held that the case was not governed by the provisions of s. 104 H. (8) or s. 111 A.; but he held that it was barred under s. 111 of the Bengal Tenancy Act and further that it was also barred under section 12 of the Code of Civil Procedure.

He passed an order allowing the plaintiffs to withdraw their suit within ten days without prejudice to their right to sue there-

1900

TROYLOKHYA-NATH BOSE v. MACLEOD.

after on the same subject-matter in a competent Court; and, on the suit not being withdrawn within the time specified in that order, he dismissed it with costs and interest.

The plaintiffs now appeal from that decree of dismissal.

It seems to us that the decree of the Lower Court cannot be supported on either of the grounds on which it was made with reference to s. 111 of the Bengal Tenancy Act. The learned Judge refers to paragraph 15 of the plaint as containing an admission by the plaintiffs that the defendants were admitted by the predecessors of the plaintiffs as tenants for a term of fifteen years, which has not yet expired, although the plaintiffs allege that the lease was infructuous and conferred no rights on the defendants. The learned Judge says that it appears to him that the defendants on these data must be found to be tenants within the meaning of the Act; that assuming that the lease granted to them was infructuous or invalid, they would still be tenants-at-will and liable to be ejected only under the law for ejectment of such tenants; that, therefore, the determination of the status of the defendants tenancy is the main contention between the parties; and that as the Court is debarred from determining the defendant's status, it cannot proceed to the other issues.

This conclusion appears to be based upon an erroneous impression as to what the case of the plaintiffs really was. The learned Judge is in error in supposing that in the 15th paragraph of the plaint the plaintiffs made any admission. They merely said that the defendants themselves alleged that they had obtained a lease of the lands in question, at the same time stating that "the said alleged *patta*" was infructuous and conferred no rights on the defendants. In the 22nd paragraph of the plaint the plaintiffs in perfectly distinct terms deny the allegations of the defendants as to tenant-right. They say: "The plaintiffs, on the other hand, allege that the defendants have not, nor ever had, any *rayati* or *kashtkari* right in or to the said plots of land or any of them, and they submit that the defendants are not entitled to retain possession of the said lands in suit or any of them.

In fact the plaintiffs, rightly or wrongly, sue the defendants as mere trespassers for ejectment and for mesne profits. What

1900

TROYLOKHYA NATH BOSE v. MACLEOD.

is barred by s. 111 of the Tenancy Act is the entertainment by a Civil Court of any suit or application for the determination of the status of any tenant in the area to which the record of rights applies until three months after the final publication of the record of rights. (We quote the substance of the section so far only as it is applicable to the present case). This suit is not brought for the determination of the status of any tenant. The allegation of the defendants that they are tenants is denied altogether and the suit is, as we have said, one for ejectment of trespassers: consequently s. 111 has no application to the present case.

With regard to s. 12 of the Code of the Civil Procedure, we are quite clear that it has been misapplied by the learned District Judge, and the learned Counsel for the defendants (respondents) admits that he is unable to support the decision of the Lower Court on that point. In the first place, the case cited by the Court below as an authority for the proposition that the proceedings of a Revenue Officer for the determination of objections under s 103 of the Act are suits, to which, the provisions of the Code of Civil Procedure apply, namely, the case of *Achha Mian Chowdhry* v. *Durga Churn Law* (1), refers to the law as it stood before the Amending Act of 1898 was passed, and is based upon the Rules framed by the Government under s. 189 of the Act as they then existed. The law as amended distinguishes between "objections," which, under the present rules of the Government, are disposed of summarily, and "disputes," which are disposed of formally after the manner of suits. Besides, a fatal objection to the application of s. 12 of the Code of Civil Procedure is that the previously instituted suit must, under the provisions of that section, be for the same relief and must be pending in a Court having jurisdiction to grant such relief. It is clear that in this case the proceedings pending before the Revenue Officer were not for the same relief (that is, for ejectment of the defendants and for mesne profits) as was sought in the present suit, nor had the Revenue Officer jurisdiction to grant such relief.

In order to determine the question, whether or not the

(1) (1897) I. L. R., 25 Calc., 146.

present suit is maintainable in the Civil Court, we have to start with the general rule laid down in s. 11 of the Code of Civil Procedure, that "the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force," and we have to see whether there is any enactment now in force barring the cognizance of the Civil Court in respect of a suit like the present one. The provisions of the Bengal Tenancy Act ousting the jurisdiction of the Civil Courts in respect of the proceedings of Revenue Officers (leaving out of consideration those which relate to settlement of rents, with which we are not concerned in this case) are ss. 109, 111 and 111A. We have already held that s. 111 does not apply to this suit, because it is not a suit for the determination of the status of a tenant. The learned Judge of the Court below has held that s. 111A does not apply, and we concur with him in that view.

There remains s. 109. That section provides that, subject to the provisions of s. 109A, which deals with appeals, a Civil Court shall not entertain any application or suit concerning any matter which is, or has already been, the subject of an application made, or suit instituted under s. 105, s. 106, s. 107 or s. 108. We are not concerned with s. 105, which relates to settlement of rents, nor with s. 108, which refers to revision by a Revenue Officer of an order or decision under s. 105, s. 106, or s. 107. S. 106 provides that if a dispute arise at any time within two months from the date of the certificate of the publication of the record of rights under s. 103A, sub-s. 2, regarding any entry which the Revenue Officer has made in, or any omission made from, the record, a suit may be instituted before the Revenue Officer by presenting a plaint on stamped paper for the decision of the dispute, and the Revenue Officer shall then hear and decide the dispute.

S. 107 provides for the procedure to be adopted by a Revenue Officer in proceedings for the settlement of rents and in proceedings under s. 106, and it provides, further, that a note of all rents settled and of all decisions of disputes shall be made by him in the record of rights finally published. In the present case no suit under s. 106 was, in fact, instituted, nor could it be instituted, because the record of rights had not at that time

1900

TROYLOKHYANATH BOSE v. MACLEOD.

been published, and, indeed, as we understand, the objections made by the plaintiffs had not been even summarily determined under the provisions of s. 103 A. That being so, it does not appear how s. 109 can apply to the facts of the present case. It applies only where the matter in question is or has already been the subject of a suit instituted under s. 106. Neither that section nor s. 106 itself renders the institution of a suit under s. 106 compulsory, or prevents the institution of a suit like the present directly in a Civil Court. It has been contended by the learned Counsel for the respondents that the mere fact that the Legislature has provided a special procedure such as that specified in s. 106 for the decision of disputes arising out of proceedings under chapter X of the Bengal Tenancy Act is sufficient to oust the jurisdiction of the Civil Courts without any express enactment. We are unable to accede to that view, especially in the presence of the fact that the jurisdiction of the Civil Courts has been in several instances barred by express enactment in chapter X. Referring particularly to s 109, we think it is a necessary inference from the fact that the Civil Courts are forbidden to entertain a suit concerning a matter which is, or has already been, the subject of a suit instituted under s. 106, that their jurisdiction is not barred in respect of a matter which has not been made the subject of such a suit.

It has been urged in argument that even if the appellants succeed in this appeal, they will not be able to obtain any practical benefit as the result of their success. We do not express any opinion as to what the position of the appellants will be in respect of any entry that may have been made against them by the Revenue Officer, for that matter is not before us. The only question with which we have to deal is whether or not there is any legal bar to their maintaining the present suit, and we must hold for the reasons which we have given that there is no such bar.

We decree the appeal and remand the case to the Lower Court to be disposed of on the merits.

The costs will abide the result.

The Court fee paid by the appellants on the memorandum of appeal will be refunded to them.

B. D. B. *Appeal allowed and Case remanded.*