CIVIL RULE.

Before Mr. Justice Mitra and Mr. Justice Caspersz.

PITAMBER SINGH

v.

SUKRIM.*

1908

Mar. 9.

Land Registration Act (Bengal Act VII of 1876) s. 78—Milkiat property—Entry in register of revenue-free estates—Regulation II of 1819.

There is a distinction between a *milkiat* or revenue-free estate, which is covered by an entry in the register of revenue-free estates after proceedings held under Regulation II of 1819 and a revenue-free *milkiat* estate not so entered.

In respect of the latter there need be no registration under the Land Registration Act (Bengal Act VII of 1876) and the provisions of s. 78 of the Act do not apply to them.

RULE granted to the plaintiff.

One Latoor Singh as mortgagee in possession instituted some rent suits and after his death the present plaintiff was brought on the record.

The defendants denied the existence of the relationship of landlord and tenant between them and the plaintiff and alleged that one Bhairo Sahai was their landlord, and that after his death his widow Rajroop Koer came into possession, to whom they had been paying rent; after her death the defendants used to pay rent to Alakroof Koer, the eldest daughter of the said Bhairo Sahai and Rajroop Koer.

The plaintiff derived his title as mortgagee of Ram Koer, the second daughter of the said Rajroop Koer, who for legal necessity had by a deed of sale conveyed the property, as was alleged by the plaintiff and found by the learned Munsiff, before whom the suit was tried in the first instance, to the said Ram Koer.

The defendants also took the objection that, inasmuch as neither the name of the plaintiff nor that of Ram Koer was registered in the Collectorate under the provisions of the Land

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Registration Act (VII of 1876), the plaintiff could not proceed with his suit.

The property was described in the plaint as *milkiat* property, and the learned Munsiff held that it had been proved to be a revenue-free estate not entered in the Collector's register, and so it was not possible that the name of Ram Koer or of the plaintiff or of any one else should find a place in the register, and he gave a decree in favour of the plaintiff.

The defendants appealed to the District Judge, who held that, the name of the plaintiff not having been registered, his suit must fail under the provisions of section 78 of the Land Registration Act; thereupon the plaintiff moved the High Court under section 622 of the Code of Civil Procedure and obtained a rule calling upon the defendant to show cause, why the said judgment and decree of the District Judge should not be set aside and he should not be directed to rehear the appeal.

Babu Umakali Mukherjee appeared for the petitioners in support of the rule. The provisions of s. 78 of the Land Registration Act do not apply, inasmuch as it has neither been alleged nor proved by any evidence that the property in suit is a revenue-free property included under one entry in any part of the general register of revenue-free lands; see s. 3 (10) of the Land Registration Act. The District Judge has erred in allowing the appeal and dismissing the suit without going into the merits of the case.

Mr. S. C. Biswas (*Babu Sarasi Churn Mitter* and *Babu Bhuban Mohan Biswas* with him) for the opposite party. This is not a fit case, in which the High Court should interfere under s. 622 of the Code of Civil Procedure, because it cannot be said that the lower appellate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. From the argument of the other side it is evident that they complain that the learned District Judge has erred in law, which is not a ground for interference under s. 622 of the Code of Civil Procedure.

[MITRA, J. The words of the section are very comprehensive.]

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With all due respect, we are very frequently told that that section should always be strictly construed. Under s. 38 of the Land Registration Act every proprietor of a revenue-free property or of any interest therein is bound to have his name registered as well as the character and extent of his interest, and s. 78 is a bar to a suit by a proprietor or mortgagee of a revenue-free property; the learned District Judge very properly dismissed the plaintiff's suit.

MITRA AND CASPERSZ, JJ. This is a rule calling on the opposite party to show cause, why the judgment and decree of the District Judge of Darbhanga should not be set aside and why he should not be directed to re-hear the appeal.

The plaintiff sued for rent alleging that he was the mortgagee in possession. The property was described as a *milkiat* property, which ordinarily means revenue free land. It may also be called a revenue-free estate, but not an estate in the sense the word "estate" is used in Bengal Act VII of 1876. Some *milkiat* lands in the Behar districts were released after proceedings held under Regulation II of 1819. These were called estates or revenue-free estates and they were entered in the Collectorate in the register of revenue-free estates. But all *milkiat* properties were not registered. It is thus not true that every proprietor of *milkiat* property is bound to have his name registered.

"Revenue-free estate" is defined in the Act. It is land included under one entry in the general register of revenue-free estates. If it is not already included, there need be no registration under Bengal Act VII of 1876; and, if no registration be necessary, section 78 of the Act does not apply. The disqualification in bringing suits for rent is one, which attaches only, to revenue-free estates already entered in the general register, if the proprietor or manager or mortgagee fails to register his name.

The Munsiff held that there was no evidence to show that the *milkiat* covered by the present suit was one that was ever registered or ought to have been registered under Bengal Act VII of 1876. The learned District Judge has made a confusion between an ordinary *milkiat* property and a *milkiat* property, which is covered by an entry in the general register of revenue-free estates.

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He is wrong in applying section 78 of the Land Registration Act to the present case.

In the absence of any evidence that the name of the predecessor of the plaintiff was recorded in the register, we think that the learned Judge ought not to have dismissed the suit on the ground of non-registration of name. He ought to have tried the appeal on the merits.

We accordingly set aside the decree passed by the learned Judge and direct, in terms of the rule, that he do re-hear the appeal. Costs of this rule will abide the result.

S. C. B.