APPELLATE CIVIL.

Before Mookerjee and Holmwood JJ.

1912

Aug. 8.

MIDNAPORE ZEMINDARI CO., LD.

v.

MUKTAKESHI DASI.*

Jurisdiction of Civil Court—Revenue Court—Bastu or homestead land—Rent, suit for—Chota Nagpur Tenancy Act (Beng. VI of 1908), s. 139 (3), cl. (a).

The plaintiffs brought a suit in the Civil Court against the defendant for recovery of arrears of *bastu* rent. The defendant contended that as crops were grown on a portion of the *bastu* land, this land was agricultural, and suits in respect thereof were triable exclusively by the Revenue Court under the Chota Nagpur Tenancy Act:

Held, that the land in respect of which rent was claimed was *bastu* land, and consequently the suit was maintainable in the Civil Court.

Ramdhun Khan v. *Haradun Puramanick* (1), *Kalee Kishen Biswas* v. *Sreemutty Jankee* (2) and *Kumood Narain Bhoop* v. *Purna Chunder Roy* (3) referred to.

SECOND APPEAL by the Midnapore Zemindari Company, Ld., the plaintiffs.

This was a suit for recovery of arrears of *bastu* rent, brought by the Midnapore Zemindari Company, Limited, against Muktakeshi Dasi, whose estate was under the management of the Manager of Encumbered Estates under the provisions of Act VI of 1876. The defendant held certain mouzas as Sirdar Ghatwal under the plaintiff company, and, on failure to pay *bastu* rent at a certain specified rate for the Fasli

* Appeal from Appellate Decree, No. 1436 of 1911, against the decree of J. C. K. Peterson, District Judge of Manbhum, dated April 21, 1911, reversing that of Gopal Das Ghose, Munsif of Purnea, dated Dec. 12, 1910.

(1) (1869) 12 W. R. 404. (2) (1867) 8 W. R. 250.
(3) (1878) I. L. R. 4 Calc. 547.

years 1315 and 1316, the plaintiff company brought a suit in the Civil Court for recovery of the same with interest. The defendant contended, *inter alia*, that, as crops were grown on a portion of the *bastu* land, the Civil Court had no jurisdiction to try this suit, which was triable only by the Revenue Court. This suit was decreed by the Court of first instance, but was dismissed on appeal. The plaintiff company, thereupon, appealed to the High Court.

Dr. Rashbehary Ghose (with him *Babu Jogesh Chandra Roy* and *Babu Sita Ram Banerjee*), for the appellants. Where the main feature of land is *bastu*, the mere cultivation of crop on a portion of the land, or the use of a portion of it for horticultural purposes, will not convert the land into an agricultural holding. Numerous cases have held this. The Chota Nagpur Tenancy Act, 1908, does not bar the ordinary jurisdiction of the Civil Courts. Under section 23 of Act X of 1859 certain suits, *e.g.*, suits for arrears of rent due on account of land, were cognisable by the Collector only. Under section 139 (*3*) of the Chota Nagpur Tenancy Act, 1908, suits for arrears of rent due on account of agricultural lands were cognisable by the Deputy Commissioner. Lands referred to in section 23 of Act X of 1859 are held to be agricultural or horticultural lands. The addition of the word "agricultural" in the Act of 1908 may give rise to difficulties, but, I submit, the word "lands" signifies the same as in the Act of 1859. The introduction of this Act of 1908 does not make any difference to the jurisdiction of the Civil Court. As regards the finding of the District Judge that the *bastu* land forms part of a *ghatwali* tenure, I submit that this finding was based on evidence introduced in the case at the time of the hearing of the appeal, and, therefore, ought not to have been relied upon, under the ruling in the case of *Kessowji Issur* v.

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Great Indian Peninsula Railway Co. (1) followed in the case of *Krishnama Chariar* v. *Narasimha Chariar* (2) and in a number of other cases. I submit therefore, that the Civil Court has jurisdiction to try this case: see *Kumood Narain Bhoop* v. *Purna Chunder Roy* (3).

Babu Ram Charan Mitra, for the respondent. My submission is that the tenure held by the respondent formed part of a *ghatwali* tenure, and suits for *ghatwali* lands lie in the Revenue Courts. Moreover, inasmuch as the lands in suit comprised both *bastu* and agricultural lands, it was not permissible for the appellants to split up their claim in respect to the lands and to bring their suit for a portion in the Civil Court. Having regard to the *ghatwali* character of the lands, the Revenue Court was the proper Court to have brought this suit in.

MOOKERJEE AND HOLMWOOD JJ. This is an appeal on behalf of the plaintiffs in a suit for *bastu* (homestead) rent. The defendant resisted the claim on the ground that as crops were cultivated on a part of the *bastu* and the *udbastu* adjoining thereto, the suit was triable exclusively by the Revenue Court under section 139, sub-section (*3*), clause (*a*) of the Chota Nagpur Tenancy Act, 1908. The Court of first instance overruled this objection, and decreed the suit on the merits. Upon appeal, the District Judge has reversed that decision on the ground that the suit is not maintainable in the Civil Court. In our opinion this view cannot be sustained.

Section 139, clause 3, provides that all suits for arrears of rent due on account of agricultural land, whether subject to the payment of rent or only to the

(1) (1907) I. L. R. 31 Bom. 381. (2) (1908) I. L. R. 31 Mad. 114.
(3) (1878) I. L. R. 4 Calc. 547.

payment of dues which are recoverable as if they were rent, shall be cognizable by the Deputy Commissioner, and shall be instituted and tried under the provisions of this Act, and shall not be cognizable in any other Court. The question, therefore, arises whether this is a suit for arrears of rent due on account of agricultural lands. Upon the pleadings, it is manifest that the rent is claimed in respect of *bastu* or homestead land. The circumstance that crops have been grown on a part of the land does not alter its character. This was pointed out in the case of *Ramdhan Khan* v. *Haradun Puramanick* (1) where Mr. Justice Markby relied upon the observation of Mr. Justice Phear in the case of *Kalee Krishen Biswas* v. *Jankee* (2), that to determine whether a case was governed by the provisions of Act X of 1859, what had to be considered was whether the main object was cultivation or habitation. In the case before us, the land in respect of which rent is claimed is *bastu* land, and, consequently, the suit is, *primâ facie*, maintainable in the Civil Court.

The District Judge, however, has held that the suit is not so maintainable, because the *bastu* land forms part of a *ghatwali* property held by the defendant. This finding is open to criticism on the ground that it is based on evidence not adduced in the Court of first instance. As was pointed out by the Judicial Committee in the case of *Kessowji Issur* v. *Great Indian Peninsula Railway Co.* (3), which was applied in *Krishnama Chariar* v. *Narasimha Chariar* (4), "the legitimate occasion for section 568 of the Code of 1882 is when, on examining the evidence as it stands, some inherent lacuna or defect becomes apparent, and not where a discovery is made, outside the Court, of fresh evidence, and the application is made

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to import it; that is the subject of separate enactment in section 623." It has not been suggested before us that the documentary evidence admitted by the District Judge at the appellate stage was not available during the pendency of the trial in the Court of first instance. This additional evidence, therefore, ought not to have been received. But even if the evidence be received, how does it affect the case? The question in controversy is, what is the true character of the land for which rent is claimed; and not, whether it is part of a *ghatwali* property which includes agricultural land. It has finally been suggested that the plaintiff has attempted to split up the rent payable in respect of the *ghatwali* property. If this objection were well founded, the suit as framed would not be maintainable in any Court. But the previous litigation between the parties shows that the rent in respect of the *bastu* lands has been successfully claimed separately from the rent payable in respect of the other lands included in the *ghatwali* property. Consequently the fact that the *bastu* land now in dispute forms part of a *ghatwali* property, does not affect the decision of the question raised before as. The truth appears to be that, by some arrangement, the details whereof have not been disclosed in the present litigation, the defendants collected rent from the under-tenants, both in respect of the *bastu* lands and the agricultural lands and made them over to the plaintiffs, separately in respect of the two classes of lands. The suit, therefore, is clearly maintainable in the Civil Court: *Kumood Narain Bhoop* v. *Purna Chunder Roy* (1).

The result is that this appeal is allowed, the decree of the District Judge set aside and that of the Court of first instance restored.

O. M. *Appeal allowed.*

(1) (1878) I. L. R. 4 Calc. 547.