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**(1912) 08 CAL CK 0005**

**Calcutta High Court**

**Case No:** None

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| Hiranund Ojha and Another | APPELLANT |
| Vs | |
| Raghunath Singh | RESPONDENT |

**Date of Decision:** Aug. 2, 1912

**Acts Referred:**

- Chota Nagpur Landlord and Tenant Procedure Act, 1879 - Section 37(4), 37(5)
- Civil Procedure Code, 1908 (CPC) - Section 2

**Citation:** 16 Ind. Cas. 904

**Hon'ble Judges:** Beachcroft, J; Ashutosh Mookerjee, J

**Bench:** Division Bench

**Judgement**

1. This is an appeal on behalf of the plaintiffs in a suit for recovery of arrears of rent and for ejectment of a ryot under Clauses 4 and 5 of Section 37 of the Chota Nagpur Landlord and Tenant Procedure Act 1879. The events antecedent to the suit are tot in controversy and may be briefly stated. The plaintiffs claim to be lessees under one Suppal Misser, who held a tenure under Bissessur Bux Roy and others, proprietors of the estate, within which the disputed property is situated. The land of the tenure was unlawfully resumed by the proprietors, whereupon the tenure-holder brought a suit to recover possession upon establishment of his khairat title. During the pendency of this litigation, the defendant was settled as a ryot by the manager under the Encumbered Estates Act, who was in possession of the properties of the proprietors. Suppal Missir was ultimately successful, and subsequently granted a lease in favour of the plaintiffs. On the 19th June 1903, the plaintiffs commenced this action for recovery of arrears of rent and for ejectment of the defendant. They set out in their plaint the previous history of the matter and alleged that the rent payable by the defendant had been fixed at a very small amount by the manager under the Encumbered Estates Act. They claimed, therefore, to recover rent at the rate of half the produce of the land. The defendant denied the title of the plaintiffs and contended that the suit was not maintainable in the Revenue Court; the

substance of his defence was that the disputed land was not included in the tenure recovered by Suppal Missir. The Deputy Collector tried the suit on the merits and made a decree for arrears of rent and for ejectment of the defendant. Upon appeal, the Judicial Commissioner has dismissed the suit on the ground that as the defendant had denied the relationship of landlord and tenant, the suit could not be entertained by the Revenue Authorities and that the remedy of the plaintiffs was by way of a suit in the Civil Court for recovery of possession and mesne profits. The plaintiffs have appealed to this Court, and on their behalf, it has been contended that the jurisdiction of the Revenue Court was not ousted by the denial of their title by the defendant, but that it was incumbent upon the Court to determine whether the suit was maintainable u/s 37 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879. In support of this position, reliance has been placed upon the cases of Huree Persad v. Koonjo Behary Shaha Marsh. 99 : W.R. (F.B.) 29 : 1 Ind. Jur. (O.S.) 20 : 1 Hay. 238; Chunder Koomar Mundul v. Bakur Ali Khan 9 W.R. 598 and Sree Chand v. Budhoo Singh 13 W.R. 301; and reference has also been made to the cases of Joylal Sheikh v. Brojonath Paul Chowdry 9 W.R. 162 Ram Chandra Chowdhry v. Subal Patro 11 W.R. 539 : 3 B.L.R. 74 and Ram Bhisto Acharjee v. Cheyt Lall Tewary 15 W.R. 451.

2. On behalf of the respondents, the competency of the appeal has been questioned on two grounds, first, that u/s 144 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879, a second appeal does not lie to this Court, and secondly, that the order of the Judge is not a decree, because it does not decide any of the matters in controversy between the parties to the litigation. On the merits, it has been contended, in the first place, that as the defendant raised a question of title the jurisdiction of the Revenue Court was forthwith ousted. In support of this proposition, reliance has been placed upon the case of Raghu Nath Bhagat v. Syed Samad 12 C.W.N. 617 : 7 C.L.J. 560 and reference has been made to a series of decisions under Act X of 1859, amongst which may be mentioned those of Gooroodoss Roy v. Ramnarain Mitter 7 W.R. 186 : B.L.R. Sup. Vol. 628 : 2 Ind. Jur. (N.S.) 112; Seraj Mundul v. Bistoo Chunder Roy 7 W.R. 459 Lalljee Sahoo v. Bhugwan Doss 8 W.R. 337 and Nistarinee v. Kalee Pershad Doss 21 W.R. 53. It has been argued, in the second place, that on the allegations in the plaint, the sum claimed by the plaintiffs is clearly not rent but damages for use and occupation, and that a claim of this character cannot be entertained in the Revenue Court in View of the decisions in Bhoobun Mohun Bose v. Chundernath Banerjee 17 W.R. 69; Kishen Gopal Mawar v. Barnes 2 C. 374; Fakeer Rohoman v. Bhabosoondery Dabea 1 W.R. 332; Taramonee v. Birressur Mozoomdar 1 W.R. 86 and Ram Chunder v. Ranzanee 2 W.R. 5 (Act X Rulings). It has been urged, in the third place, that the plaintiffs are not entitled in the Revenue Court to a decree for ejectment on the ground that the lease to the defendant has expired, and in support of this proposition, reliance has been placed on the cases of Sadat Ali v. Musammat Sadattunissa 12 W.R. 37 : 3 B.L.R. 161 and Hari Nath Das v. Sheikh Asmut Ali 15 W.R. 171 : 6 B.L.R. 118.

3. In so far as the preliminary objection to the competency of the appeal is concerned, it is clear that the objection cannot be sustained. No doubt it was decided by a Full Bench of this Court in the case of Khedon Mahato v. Budhun Mahato 27 C. 508 : 4 C.W.N. 333 that a second appeal was not allowed in a suit for rent by Section 144 of Act I of i879, B.C. Whether this decision gave effect to the true intentions of the Legislature, may be a matter for controversy, in view of what is known to have been the uniform practice, ever since 1861, under the corresponding provision of Act X of 1859. Haladhar v. Mohesh Chandra (1861) Beng. S.D.A. 144; Sarai Naik v. Serai Naik 28 C. 532. But we know this much, that after the decision of the Fall Bench, the Legislature promptly intervened, and by Section 44 of Act V of 1903 B.C. which has been overlooked by the learned Vakil for the respondent, provided for a second appeal to the High Court from all appellate decrees passed by the Judicial Commissioner under the Act. It has been argued, however, that this is not an appellate decree passed by the Judicial Commissioner under the Act, first, because, it is not a decree, and, secondly, because even if it is a decree, it has not been passed under the Act. This argument is obviously fallacious. There is plainly no force in the contention that the decision of the Judicial Commissioner is not a decree, because it does not decide the matters in controversy between the parties. The decision of the Judicial Commissioner is to the effect that the plaintiffs are not entitled to realise from the defendant the rent claimed by them, and that their remedy is by way of a suit for ejectment and mesne profits in the Civil Court. This adjudication obviously negatives the claim for rent and must, consequently, be deemed a decree as defined in Section 2 of the Code of Civil Procedure, 1938. There is also no foundation for the argument that the decision, even if a decree, was not given under the Act. The Deputy Collector made a decree for rent and ejectment; the present respondent preferred an appeal against that decree to the Judicial Commissioner u/s 144 of Act I of 1879 B.C. The appeal was allowed, and the decree of the primary Court discharged; clearly, this was an appellate decree passed by the Judicial Commissioner under the Act, irrespective of the question whether he decided rightly or wrongly Malkarjun v. Narhari 25 B. 337 : 27 I.A. 216 : 2 Bom. L.R. 927 : 5 C.W.N. 10 : 10 M.L.J. 368; Nathuram v. Kalian Das 26 A. 522 : I.A.L.J. 217 : (1904) A.W.N. 110. The appeal, in our opinion, is perfectly competent. As regards the merits of the appeal, it cannot be disputed that the view taken by the Judicial Commissioner is erroneous. It was pointed out by Sir Barnes Peacock, C.J., in the case of Huree Persad Malo v. Koonjoo Behary Shaha Marsh. 9 : W.R. (F.B.) 29 : 1 Ind. Jur. (O.S.) 20 : 1 Hay. 238 that in a case of this description, the jurisdiction of the Revenue Court is not ousted, merely because the defendant denies the title of the plaintiff as landlord. The same view was taken by Mr. Justice Phear in the case of Chunder Koomar Mundul v. Bakur Ali Khan 9 W.R. 598 whose the learned Judge stated that the jurisdiction of a Court of justice to entertain and decide upon a cause of action depends upon the nature of the claim put forward by the plaintiff as his cause of action and the matter involved in it, and does not depend upon what the defendant may please to assert by way of defence. In fact, if the contrary view were

maintained, the action of a Court of justice, might be paralysed, as was pointed out in the cases of Hudson v. Morgan 36 C. 713 at P. 721 : 1 Ind. Cas. 356 : 13 C.W.N. 654 : 9 C.L.J. 563 and Budh Singh Dhudhuria v. Nirodbaran Roy 2 C.L.J. 431 at p. 437 by the groundless assertion of an entirely unfounded claim by the defendant. It is an elementary principle that when the jurisdiction of a Court to take cognisance of a matter brought before it is disputed, the Court must adjudicate upon the question. The jurisdiction of the Court is ousted, not by the mere assertion of the existence of the circumstances under which the Court loses its jurisdiction, but upon proof of their actual existence. The dictum to the contrary in Raghu Nath Bhagat v. Syed Samad Shah 12 C.W.N. 617 : 7 C.L.J. 560 cannot be defended on principle, and is opposed to the uniform current of authorities in this Court since lfc62, when Huree Persad v. Koonjo Behary Marsh. 9 : W.R. (F.B.) 29 : 1 Ind. Jur. (O.S.) 20 : 1 Hay. 238 was decided by a Full Bench. In the present case, therefore, the Judicial Commissioner should have heard the appeal on the merits, and not dismissed the suit on the ground that the jurisdiction of the Revenue Court was ousted as the defendant denied the title of the plaintiffs.

4. But it has been tenaciously maintained on behalf of the defendant that the plaint, on the face of it, shows that the suit cannot be entertained by a Revenue Court. It has been argued that the plaintiffs do not regard the defendant as tenant, and that the sum claimed is not rent but damages for use and occupation. There is, however, no foundation whatsoever for this contention. It need not be disputed that if a plaintiff does not sue the defendant as his tenant, or if he seeks a declaration of his title against a person other than the raiyat, the suit is not cognisable by the Revenue Court. But the present suit does not fall within either of these categories. No doubt, the plaintiffs did not settle the land with the defendant, who was inducted into the land by and on behalf of the proprietors, when they were wrongly in occupation of the tenure. But the plaintiffs, as lessees under the tenure-holder, who has successfully established his title as such against the proprietors, accept the defendant as their tenant, and seek to realise rent from him. It cannot be suggested that, to use the language of Lord Ellenborongh in Rochester v. Puree Campbell 466 there was no demise and the defendant used and occupied the premises without arrangement for the payment of rent. A suit of this character is in essence a suit for recovery of arrear of rent within the meaning of Section 37 of Act I of 1879 B.C. The suit is also for ejectment of the defendant. It may be conceded that the plaintiffs cannot eject the defendant by a suit in the Revenue Court on the ground that the term of his lease has expired, but u/s 88 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879, the plaintiffs are entitled to a decree for ejectment for non-payment of rent, and the Court of first instance presumably made a decree for ejectment of that character alone. Under the circumstances, we are unable to hold that the suit was not maintainable in the Revenue Court. The result is that the appeal is allowed, the decree of the Judicial Commissioner discharged and the case remitted to him in order that the appeal may be heard on the merits. The

respondent must pay the appellants their costs in this Court.