

(1914) 05 CAL CK 0006
In the Calcutta High Court
Case No : Ref. No. 9 of 1913

Bande Ali Fakir and Others

APPELLANT

Vs

Amud Sarkar and Others

RESPONDENT

Date of Decision : 29-05-1914

Acts Referred:

Citation : (1914) 05 CAL CK 0006

Judgement

1. This is a reference by the District Judge of Dacca under r. 7 of Or. 46 of the Civil Procedure Code, 1908. The Petitioner instituted a suit in the Court of the Munsif at Dacca for recovery of a sum of Rs. 326-4-10 from the Defendants on the basis of what is called a sedar-patta, that is, a lease under a sub-lease. The Munsif held that the suit was cognizable by a Court of Small Causes, and on the 1st July 1918 returned the plaint for presentation in the proper Court. The plaint was then presented in the Small Cause Court at Dacca, but the Judge returned the plaint on the 8th July 1913, because the suit, in his opinion, was not maintainable in the Small Cause Court. The District Judge has, accordingly, upon the application of the Plaintiffs referred the question to this Court, whether the suit is maintainable in the ordinary Civil Court or in the Small Cause Court; he has expressed the opinion, that the view of the Small Cause Court Judge as to the nature of the suit is erroneous. On the 23rd March 1911, the Defendants executed a kabuliyat in favour of the Plaintiffs in respect of forest rights in a tract of land described by boundaries at the foot of the document. The kabuliyat states that for a period of one year, four months and twenty-one days, from the 23rd March 1911 to the 15th August 1912, the executants would have the right to cut and take out of the forest all the gajari trees and all wild trees (with the exception of mango, jack-fruit, tal, bel, tamarind and simul trees) in close proximity thereto, of a circumference of more than 18 inches and one cubit above the ground, on the tract within the boundaries mentioned. The consideration for this sublease was specified to be Bs. 450, out of which Bs. 150 was paid in cash, and the balance was made payable in two equal instalments on the 17th September and 16th November 1911. The Plaintiffs allege that the

Defendants have exercised acts of possession under the sub-lease, and. have felled and sold the forest trees, but have withheld payment of the rent, except a sum of Rs, 97 paid in two instalments. The Plaintiffs seek to recover the balance with interest and costs. The question arises, whether the suit is in essence one for damages for breach of contract maintainable in a Court of Small Causes, or whether it is a suit for rent entertainable only by the ordinary Civil Court.

2. Sec. 193 of the Bengal Tenancy Act provides that the provisions of the Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest rights, rights over fisheries and the like. It is plain that the view most favourable to the Defendants is that the document executed by them, and called a kabuliyat, does not create in their favour any interest in the land on which the forest stands. But it cannot be disputed; that it creates in their favour forest rights within the meaning of sec 193. The transaction cannot rightly be regarded as a sale of timber; the trees were not and could not be specified, as the grantees were clearly entitled to fell timber which might attain the prescribed size at any time within the period during which the rights conferred on them were to be in force. It is further clear that what the Plaintiffs now seek to recover was payable in respect of the forest rights conferred by them on the Defendants. This view is supported by the decision of this Court in *Abdul-Ullah v. Asraf Ali* (1). It follows consequently that the provisions of the Bengal Tenancy Act, applicable to suits for the recovery of arrears of rent, apply, as far as may be, to the present suit for the recovery of money payable in respect of forest rights. Consequently under sec. 144, sub-sec. 1, the cause of action must be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the trees. This view, it may be conceded, is open to the criticism that the language of sec. 144 is possibly unduly strained to enable us to reach the conclusion. But it is supported by the judgment of Banerjee, J., in *Shibu Haldar v. Gupi Sundari*) I. L. R. 24 Cal. 449 (1807), where sec. 144 was held to apply to a case of fishery right; and this was followed, though not without some hesitation, in *Abdul-Ullah v. A sraf Ali* 7 C. L J. 152 (1907) [see also *Shib Prosad v. Vakai Pali* I. L. R. 33 Cal. 601 (1906)]. The question finally arises whether the suit is one for the recovery of rent other than house-rent within the meaning of cl. (8) of the Second Schedule to the Provincial Small Cause Courts Act; because unless excepted from. the cognizance of a Court of Small Causes, the suit must be tried by such Court under sub-sec. (2) of sec. 15. Now the term ""rent"" is not defined in the Small Cause Courts Act, nor is any definition given in the General Clauses Act. The definition given in sec. 105 of the Transfer of Property Act or in sec. 3, cl. 5, of the Bengal Tenancy Act is of no assistance, because each of such definitions was framed for the purposes of a special statute. When we turn to law lexicons, we find a variety of definitions given. Sweet refers to Co. Litt. (142 a) and defines rent as a periodical payment due by a tenant of land or other corporeal hereditament, which is usually payable in money but may also be

reserved in fowls, wheat, spurs or the like. Wharton defines it as a certain profit issuing yearly out of lands and tenements corporeal, and adds that it must issue out of the thing granted and not be part of the land or the thing itself. Bouvier defines rent as a certain profit in money, provisions, chattels or labour, issuing out of lands and tenements, in retribution for the use, and is thus distinguishable from purchase-money. [Barrs v. Lea [1664] 12 W. R. 525.] Anderson defines rent as a compensation or return in the nature of an acknowledgment given for the possession of some corporeal inheritance. In Bacon's Abridgment, Tit-Bent, reference is made to Co. Litt. (47 a, 142 a), and it is laid down as a general rule that no rent can issue out of any incorporeal inheritance which lies in grant, because they are such things in their nature as a man can never recur to for a distress. To this is added the illustration that lease of the vesture or herbage of land, reserving rent, is good, because the lessor may come upon the land to distrain the lessee's beasts feeding thereon. It is not necessary, however, to treat distress as an inseparable concomitant of rent, and in Broune v. Pitto [1900] 2 Q B. 683, it was pointed out that in the Conveyancing Act, 1881, the term "" rent "" is used to include recurring payments not issuing out of the thing demised and for which accordingly there can be no distress. It is further pointed out in the Laws of England, Ed. Halsbury, Vol. 24, para. 1032, that the term rent is sometimes used in a very comprehensive sense and includes periodical sums of money charged upon or paid out of land and all corporeal hereditaments [Skene v. Cook [1902] 1 K. B. 682.] It has also sometimes been observed that rent may issue, not only from lands and tenements corporeal, but also from the personal property necessary for their proper enjoyment; for instance, where a furnished house or a stocked farm is leased, in such cases the personal property is really a part of the consideration of the rent, so that when the view is sought to be maintained that the rent issues out of the land alone [Selby v. Greaves L R. 3 C. P. 594 (1686). and Farewell v. Dickenson 6 B. & c. 251 (1827)], there is an attempt at a fictitious accommodation of the case to the defective definition. To return to the Provincial Small Cause Courts Act, it is plain that the term " rent " in cl. (8) of the Second Schedule is used in a wide sense, otherwise the legislature would not have found it necessary to exclude explicitly house-rent from its scope. We are consequently of opinion that what is payable by the Defendants to the Plaintiffs in respect of forest rights granted to them, is in the nature of rent for the purposes of determining the jurisdiction of the Court, as it has been already held to be for the purposes of determining the question of limitation applicable to a suit for its recovery. [Abdul-Ullah v. Asraf Ali (1).] In this view, the plaint must be returned to the Munsif, so that he may entertain the suit and try it on the merits; the suit will be deemed for purposes of limitation to have been instituted in his Court on the date on which the plaint was originally presented.