

(1878) 07 CAL CK 0012
In the Calcutta High Court

Bireshur Mozoomdar

APPELLANT

Vs

Krishna Kishore Shaha

RESPONDENT

Date of Decision : 18-07-1878

Acts Referred:

Citation : (1879) ILR (Cal) 595

Hon'ble Judges : Mitter, J; Maclean, J

Bench : Division Bench

Judgement

Mitter, J.—We think that in this case the preliminary objection taken by the pleader for the respondent must prevail. The plaintiff brought this suit to recover from the defendant No. 1 Rs. 74-12-14 1/4 under the following circumstances: The plaintiff alleges that he is the holder of a patni taluk, the rent of which is Rs. 128-11-2 1/2; that by an arrangement between himself and the defendants Nos. 1 and 2, the zamindars, he had, out of the rent payable by him, to pay Rs. 76-4 Government revenue of the zamindari, and Rs. 3-2 road-cess; and that he, accordingly, for the year 1281, paid these two amounts into the Collectorate; that the balance, Rs. 49-5-1 1/2-, which was due to the defendants Nos. 1 and 2, was tendered to them, but they having refused to receive that money he deposited the amount in the Munsif's Court on the 1st of April 1874 under the provisions of Section 46, Beng. Act VIII of 1869; and that, notwithstanding these facts, the defendant No. 1 took proceedings under Reg. VIII of 1819 to recover his half share of the rent payable by the plaintiff on account of this patni. The plaintiff further states, that although he protested against these proceedings on the ground that the rent due had been already paid, the Collector passed an order for the sale of the patni tenure under Reg. VIII of 1819, and he, the plaintiff, in order to save the tenure, was accordingly obliged to pay on the 1st of Joisto 1282 the sum of Rs. 68-6-1 1/4 claimed by the defendant No. 1. Under these circumstances the plaintiff contends that he is entitled to recover back from the defendant No. 1 Rs. 68-6-1 1/4 together with Rs. 6-6-0, being the interest accruing due upon that amount. We think that this is a suit, which is cognizable by a Court of Small Causes. It is a suit for damages

which the plaintiff" sustained by reason of the defendant No. 1 having taken proceedings under Reg. VIII of 1819 to recover money which had already been paid. It has been contended on behalf of the special appellant that, upon the facts stated in the plaint, the present suit was of a nature which was cognizable by the Collector under Act X of 1859, and is at present cognizable by the Civil Court under the Rent Law, Beng. Act VIII of 1869. This contention is based upon the 4th proviso of Section 6, Act XI of 1865. That proviso is to the following effect: "For any claim for the rent of land, or other claim for which a suit may now be brought before a Revenue Officer, unless, as regards arrears of rent for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly, invested by the Local Government with jurisdiction over claims to such arrears."

2. This proviso refers to one of the excepted classes of suits which the Courts of Small Causes are prohibited to take cognizance of. Is this a suit coming within this proviso? The answer to this question evidently depends upon this:

Whether this suit could have been taken cognizance of by the Revenue Court under Act, X of 1859, and after the repeal of that Act by the Civil Courts under Beng. Act VIII of 1869, which repealed Act X of 1859. Section 104 of Beng. Act VIII of 1869 also prohibits the Small Cause Court from taking cognizance of cases which they could not take cognizance of previous to the passing of that Act. That section says: "Nothing in this Act contained shall be deemed to confer upon any Court, sitting as a Court of Small Causes, cognizance of any suit brought under the provisions of this Act, of which it would not have had cognizance if this Act had not been passed."

3. Therefore the question we have to determine, with reference to this argument, is, whether, under the provisions of Clause 2, Section 23, Act X of 1859, this suit, was cognizable by the Collector under the provisions of Act X of 1859. Clause 2 of Section 23 says: "All suits for damages on account of the illegal exaction of rents or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress shall be cognizable by the Collectors of land revenue, and shall be instituted and tried under the provisions of this Act, and, except in the way of appeal, as provided in this Act, shall not be cognizable in any other Court."

4. The question in this case is, whether, taking the facts which are stated in the plaint as correct, the defendant could be said to have illegally exacted any rent from the plaintiff within the meaning of this section. Now it is quite clear that the defendant had recourse to a legal proceeding in order to compel the plaintiff to pay that money. He applied to the Collector to sell the patni tenure under the provisions of Reg. VIII of 1819; and therefore, taking the plaintiff's case as correct, he might have under Clause 2, Section 14, Reg. VIII of 1819, claimed a summary enquiry; and he might also, if there was no time for the summary enquiry to be concluded before the sale, have deposited the money, and asked the Collector to hold the summary enquiry provided for in this section. It is,

therefore, quite clear, that, if the plaintiff was so minded, he might have applied to the Collector at any time before the sale was held, and asked the Collector to enquire into his claim. Instead of following that course, the plaintiff paid the money to the zamindar; and under these circumstances we cannot say that this was an illegal exaction of rent on the part of the zamindar. The zamindar had recourse to the provisions of the law which entitled him to bring the patni to sale, and having taken these proceedings, authorized by law, we cannot say that he illegally exacted any money. We are supported in this view of the law by *Debendernauth Roy Chowdry v. Chundermonee Chowdrain* (2 Hay. 519); and although the facts of that case are not precisely similar to the facts of this case, the principle there laid down will equally apply to the decision of this case. In that case the Chief Justice Sir Barnes Peacock, in delivering the judgment of the Court, says: "The tenant might have contested his liability to pay that amount, and might have demanded a summary investigation as to the amount due, and he might have stayed the sale of the tenure by depositing the amount claimed. Instead of doing so, however, he paid the amount claimed to the zamindar. The zamindar having recovered the amount under a proceeding proscribed by law, the question is, whether that is an undue exaction. He possibly might have demanded more than was due, after allowing for the rice supplied; but the plaintiff, instead of demanding an investigation, paid the amount claimed with knowledge of all the facts. Can this be said to be an illegal exaction of rent within Section 23, Clause 2 and Section 10 of Act X of 1859? We think that it is not an illegal exaction of rent within the meaning of that Act."

5. This case clearly supports the view which we take of the nature of the claim in the present case; and we think that the suit is clearly cognizable by the Court of Small Causes, and, therefore, the special appeal to this Court is barred by the provisions of Section 27, Act XXIII of 1865.

6. The special appeal is dismissed with costs.