1864.
April 8.

Special Appeal No. 420 *of* 1863.

BA'I MAHA'LAKSHMI' .....*Appellant.*
ANDHA'RU' KESHAVRA'M NARASI'RA'M.....*Respondent.*

Rent—Landlord and Tenant—Estoppel—Title—Jurisdiction—Reg. XVII. of 1827, *Sec.* XXXI., *Cl.* 3—*Act XVI. of* 1838, *Sec.* I., *Cl.* 1.

In a suit to recover rent in a revenue court, under Reg. XVII. of 1827, Sec. XXXI., Cl. 3 :—

Held that the proper questions to determine were, whether the defendant occupied the land as tenant of the plaintiff, during the period alleged, and if so, what rent was due; and that a defendant so sued could not deprive the court of jurisdiction by setting up a title in himself; nor did the suit by such defence become one "in which the right to possession of land is claimed" within the meaning of Sec. I., Cl. 1, of Act XVI. of 1838.

THIS was a special appeal from the decision of T. C. Hope, Acting Collector of Ahmedábád, in Appeal Suit No. 13 of 1862, reversing the decree of the Mámlatdár of Daskrohí in Original Suit No. 6 of 1862.

Shántárám Nárâyaṇ (with him *Dádábhái Frámji*) for the appellant.

Dhirajlál Mathurádás for the respondent.

The facts, as well as the proceedings, in this case are sufficiently stated in the following judgments :—

FORBES, J. :—This was a suit filed by the plaintiff, Bái Mahálakshmí, in the court of the Mámlatdár of Daskrohí, to recover Rs. 55; being the balance of rent due to her for the years 1860-61 and 1861-62, for a field belonging to her. The defendant, Keshavrám, made answer that he was the owner of the field; that the suit was one which affected the proprietary title to land; and that, therefore, it could not be carried on in the revenue courts.

The Mámlatdár found for the plaintiff, Mahálakshmí; but did not allow her the full amount of rent she claimed. Where upon she appealed; and his decree was reversed by the Collector, who held that plaintiff, Mahálakshmí, had not established a *primâ facie* right to demand rent; and, therefore, threw

1864.

BA'I MAHA'LAKSHMI' v. ANDHA'RU' KESHAVRA'M NARASI'RA'M.

out the claim, leaving it to her to establish her title to the land in the civil courts.

Upon this, the plaintiff, Mahálakshmi, has made a special appeal to this court, in which she urges that the Mámlatdár had decided the land to be her property, though he had awarded her a smaller sum than she had claimed; and that the defendant, Keshavrám, not having appealed, the Collector was in error in rejecting her claim.

Act XVI. of 1838, Sec. 1., Cl. 1, enacts that "all suits in regard to tenures, and the nature and extent of the interest and advantage which in virtue thereof should be enjoyed by the parties concerned, and all suits in which the right to possession of land or of watans of hereditary district or village officers is claimed, shall be brought in the Courts of Adálat and the courts subordinate thereto, and not in the courts of revenue."

If the issues in the present suit had been properly settled by the Mámlatdár, the first issue should, as I consider, have been to the following effect:—"Is the field in dispute the property of the plaintiff, Bái Mahálakshmí; or is it the property of the defendant, Keshavrám."

Had the Mámlatdár raised this issue, as I think he was bound to do, it would probably have appeared to him that the suit was one of those alluded to in the words which I have quoted from Act XVI. of 1838, Sec. 1., Cl. 1, as having regard to tenures, and the nature and extent of the interest and advantage which in virtue thereof should be enjoyed by the parties concerned; and that it was, in fact, not within his jurisdiction. The course which the law pointed out to him as that which should be followed would have then been that prescribed by Sec. 3 of the said Act; and it would have become his duty to submit the case to the Collector's court, to which his court is subordinate; and if the Collector were of opinion that he (the Mámlatdár) had jurisdiction in the case, he would have directed the Mámlatdár to proceed with the case; or if the Collector were of opinion that the Mámlatdár had not jurisdiction in the case, he would

under Sec. 2 of the Act, have referred the question of jurisdiction to this court, whose decision would have been final.

The proper procedure was not, however, adopted by the Mámlatdár; and the case, consequently, came in appeal before the Collector: the plaintiff, Mahálakshmí, urging in her appeal, among other things, that the Mámlatdár had decided the land to be her property.

The Collector seems to have held that the plaintiff, Mahálakshmí, could only establish her right to the land in the civil courts; but, holding that opinion, he did not take the course which was prescribed for him by the law (Sec. 5 of Act XVI. of 1838); and, instead of referring the suit to be tried in the court to which the jurisdiction properly belonged, he reversed the decree of the Mámlatdár, upon which his own decree was brought before this court on the present special appeal.

The question now is, how is this special appeal to be disposed of? The answer to that question depends upon the answer to the previous question, what is the nature of this suit? Is it a suit for rent, or is it a suit in regard to tenure, and the nature and extent of interest and advantage which, in virtue thereof, should be enjoyed by the parties concerned?

I think that when a plaintiff comes into a revenue court with a suit for rent, he comes there with the implied assertion that his proprietary title is not disputed, and that under that admitted title he is justified in claiming rent. If his title is not admitted, much more if it is distinctly denied, he cannot sue for rent in a revenue court, until he have established his title in a civil court; and in this case, as it was argued before us in appeal, the plaintiff, Mahálakshmí, does, in fact, try to establish (though, as I think, before the wrong court) that the defendant, Keshavrám, has admitted her title. Her statement is that the defendant, Keshavrám, in a deposition taken by the Collector on the 31st of March 1863, the day on which the appeal was first brought before him, admitted that Ambárám, the person in,

1864.

BA'I MAHA'-LAKSHMI' v. ANDHA'RU' KESHAVRA'M NARASI'RA'M.

whose name the field stands in the revenue books, mortgaged the field to her (plaintiff's) husband, Búlákirám; and that one Devji became the tenant of Búlákirám, and that the defendant, Keshavrám, derives his title to hold the field from Búlákirám. The Collector, however, with this deposition before him, held that Mahálakshmí had not established a *primâ facie* right to demand rent, and this decision, given in a matter involving several questions of fact, would be conclusive upon us, if it could be admitted that the Collector was empowered to touch the question of title, which I cannot admit.

I hold, therefore, that this suit, though nominally a suit for rent, is really a suit to establish a proprietary title in land; and that it should have been brought and decided in a Court of Adálat.

Sec. 5 of Act XVI. of 1838 enacts that when any court trying an appeal finds that the action was originally brought and decided in a revenue court, when it ought to have been brought and decided in a Court of Adálat, or a court subordinate thereto, the court trying the appeal shall, instead of quashing the whole proceeding, annul only the decree; and refer the suit to be tried in the court to which the jurisdiction properly belongs.

I would, therefore, annul the decree of the Collector and the Mámlatdár under this section, and refer the suit to be tried in the court of the District Judge of Ahmedábád, or a court subordinate thereto.

There are precedents for this course in the decisions in Special Appeal No. 111 of 1862, decided on the 20th of January 1863, and No. 110 of 1862, decided on the 11th of June 1863. These decisions were, I believe, given in accordance with the opinions of a majority of the Judges then sitting at the Appellate Side of this court, including the Chief Justice; and I do not think there is ground for re-opening the question. As, however, Mr. Justice Erskine does not agree with me, the point must be referred to a third Judge.

1864.

BA'I MAHA'LAKSHMI' v. ANDHA'RU' KESHAVRA'M NARASI'RA'M.

ERSKINE, J. :—In this case the plaintiff sued to recover rent; and it is admitted that she was right in suing originally in the revenue courts. Subsequently, however, it appeared that the defendant disputed the plaintiff's title; and the question is, what course should the officer presiding in a revenue court adopt in such circumstances?

It appears to me that (1) he may allow the plaintiff to withdraw his suit, without prejudice to his right of action; or (2) he may make such reasonable postponement as will give the plaintiff an opportunity of obtaining a declaration of title from a court competent to give it.

It has apparently been held that if a revenue court takes upon itself to pronounce on a question of title thus raised, the appellate court should reverse the decree, and transfer the suit to the Court of Adálat. It is with reluctance that I feel myself constrained to re-open this question. But as it is a question of jurisdiction, as well as of procedure, affecting an entire class of cases, as the reasons of the former decisions were not, apparently, recorded, and as it seems to me that the regulation and interpretations (see that of the 17th of July 1844) deprive the Courts of Adálat of the power of adjudicating on such a claim (they cannot award what was not asked in the plaint, and they cannot award what alone was asked therein); it may be well that the question should once more be formally raised and decided.

The two Judges having differed, the case was referred to COUCH, NEWTON, and TUCKER, JJ., whose decision was this day delivered by

COUCH, J. :—The plaintiff sued the defendant in the court of the Mámlatdár of Daskrohí for Rs. 55, being the balance of rent, for the years 1860-61 and 1861-62, of a field in the village of Ghorasar.

The defendant appeared in person, and pleaded that he was the owner of the field; and that the suit, being one of right to land, not to rent, could not be carried on in the revenue court; and that he had never passed any agreement to the plaintiff, and had never paid rent.

1864.

BA'I MAHA'-LAKSHMI' v. ANDHA'RU' KESHAVRA'M NARASI'RA'M.

By Reg. XVII. of 1827, Sec. XXXI., Cl. 3, "the Collector is vested with the civil cognisance, in the first instance, of all disputes regarding rent." (*a*) The present suit was for rent; and the plaintiff, in order to recover, was obliged to show that the defendant was her tenant, and had made a contract, either expressly or by implication, with her to pay for the occupation of the land. The defendant was not at liberty to set up a title in himself, and thereby deprive the Collector's court of jurisdiction. A tenant is estopped from disputing the title of his landlord, during the tenancy; and the real question in the suit was, whether the defendant was the plaintiff's tenant, and had made such a contract, either express or implied. If the plaintiff failed to prove this, she was not entitled to recover rent from him; and if she could prove it, it would be unjust to treat the suit as one to try the right to the land, and thereby deprive her of the benefit of the estoppel which the defendant would then be under.

We, therefore, feel compelled to differ from the opinion of Mr. Justice Forbes, that if the issue had been properly settled by the Mámlatdár, the first issue should have been, whether the field in dispute was the property of the plaintiff or of the defendant. To record such an issue would have been, upon the mere allegation of the defendant, without any proof, entirely to alter the position of the plaintiff, and to oblige her to prove a title to the land, when it might be that the defendant had actually received possession of it from her, and had agreed to pay her rent for it.

The proper questions, in our opinion, were: whether the defendant had occupied the land as tenant to the plaintiff during the years in question; and what rent remained due. And these questions were in effect tried by the Mámlatdár, who found that the defendant had become tenant to the plain-

(*a*) By Reg. VI. of 1830, Collectors, and Sub-Collectors (vested with the same functions and jurisdiction by Sec. II., Cl. 5, of Reg. V. of the same year) were authorised to refer such suits, when the claim did not exceed Rs. 500, to the Kamávisdárs of their districts, from whose decision they were to hear appeals, subject to a special appeal to the Sadr Adálat. And see note at page 192, *post*.—ED.

tiff, by an agreement made in 1858; and made a decree in the plaintiff's favour, for the rent for the two years as claimed, at the rate mentioned in the agreement, viz., Rs. 15, deducting Rs. 19, held to have been paid by the defendant.

In making this decree the Mámlatdár did not exceed his jurisdiction, or decide any question of title to the land, independently of the tenancy alleged to exist between the parties, which it was competent for him to inquire into.

The plaintiff appealed, on the ground that a subsequent verbal agreement, making an alteration in the terms of the tenancy, was established by the evidence, and that the decree should have awarded rent at a higher rate; and the Collector, on appeal, held that neither agreement was proved, and that the plaintiff had no right to demand rent.

We are of opinion that this suit was a dispute regarding rent, within Sec. XXXI., Cl. 3, Reg. XVII. of 1827; and that it has been decided by the revenue court upon a question, which that court was competent to try, viz., whether the defendant had ever agreed to pay rent; and that this was not a suit "in regard to tenure," or "in which the right to possession of land" was claimed, within the meaning of Sec. I., Cl. 1, of Act XVI. of 1838; and that it does not come within Sec. 5 of that Act, as an action "originally brought and decided in a Revenue Court, when it ought to have been brought and decided in a Court of Adálat, or a court subordinate thereto."

We, therefore, answer both the questions referred in the negative. We think the decree of the Collector should be confirmed. The plaintiff may, notwithstanding this decree, bring a suit in the proper court to establish her right to the land; and, if she succeeds in doing so, will be entitled to recover the mesne profits, for the period for which rent has been claimed in this suit, if the defendant has been in the occupation of the land.

Decree confirmed.