APPELLATE CIVIL.

Before Justice Sir Richard Harington and Justice Sir Asutosh Mookerjee.

PARBATI DEBI. 1912

v. *Jan.* 12.

MATHURA NATH BANERJEE.*

Enhancement of rent—Bengal Tenancy Act (VIII of 1885) s. 30—Landlord of a holding, meaning of—Res judicata—Civil Procedure Code (Act XIV of 1882) s. 13—Matter directly and substantially in issue, what constitutes.

The plaintiff and the defendants were howladars of a property. The defendants took a raiyati lease from the plaintiff of his undivided share of the howla. Upon a suit brought by the plaintiff under s. 30 of the Bengal Tenancy Act for enhancement of rent against the defendant :—

Held, that the plaintiff was not the landlord of a "holding" within the meaning of s. 30 of the Act, and as such the suit was liable to be dismissed.

Haribole Brohmo v. *Tasimuddin Mondul* (1) followed.

In a previous suit between the parties for enhancement of rent it was decided that the plaintiff had the right to enhance the rent of the defendants ; but the suit was dismissed on the ground that the rent paid by the defendants, was not lower than the rate at which rent was paid by tenants of adjoining lands. In a subsequent suit between the same parties, the question was raised by the plaintiff that his right to enhance the rent of the defendants was *res judicata*.

Held, that inasmuch as the decision upon the question of the right of the plaintiff to enhance the rent was not the basis of the decree ultimately made in the previous suit, it was not *res judicata* between the parties.

* APPEAL from Appellate Decree, No. 1421 of 1910, against the decree of Umesh Chandra Sen, Subordinate Judge of Dacca, dated Jan. 6, 1919, affirming the decree of Sayidur Rahaman, Munsif of Munshiganj dated July 27, 1909.

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SECOND APPEAL by Parbati Debi, the plaintiff.

This appeal arose out of an action brought by the plaintiff for recovery of arrears of rent and enhancement of rent under section 30 of the Bengal Tenancy Act. The plaintiff's allegation was that she was the proprietor of a six annas share of a howla, and the defendants of the remaining ten annas share; that the defendants took a raiyati, lease of her undivided share of the howla; that the rent of the raiyati holding held by the defendants was liable to enhancement on the ground of its being below the prevailing rate paid by the tenants of the adjoining lands.

The defendants pleaded, *inter alia*, that the suit was not maintainable at the instance of the plaintiff, who was only a co-sharer landlord, that the rent was not liable to enhancement and that the provisions of section 30 of the Bengal Tenancy Act were not applicable to the case.

It appeared that the plaintiff brought a suit previously against the defendants for enhancement of rent, which was dismissed on the ground that the rent paid by the tenants (defendants) was not lower than the rate at which rent was paid by the tenants of the adjoining lands; but in that suit it was decided that the plaintiff had the right to enhance the rent.

The Court of first instance gave effect to the objection of the defendants and decreed the plaintiff's suit partially, at the rate admitted by the defendants. On appeal, the decision of the first Court was affirmed by the learned Subordinate Judge. Against this decision the plaintiff appealed to the High Court.

Babu Harendra Naraian Mitter, for the appellant. The question whether the rent is enhanceable or not, is *res judicata* between the parties. In a previous suit between the parties, this question was

raised and finally decided. The case of *Peary Mohun Mukerjee* v. *Ambica Churn Bandopadhya* (1) supports my contention. The Court below was wrong in law in holding that s. 30 of the Bengal Tenancy Act did not apply to the case. The plaintiff was the landlord of the holding within the meaning of the section. The introductory words of s. 3 of the Bengal Tenancy Act say that "unless there is something repugnant in the subject or context" holding means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy. Section 30 of the Act says the landlord of a "holding" held at a money rent may insitute a suit for enhancement. The definition of holding as given in the Act is repugnant to section 30 of the said Act. The definitions of "raiyat" and "rent" show that a raiyat may hold a share of a parcel of land for which he may be liable to pay rent to the landlord. That being so section 30 of the Bengal Tenancy Act would be applicable to the facts of the present case.

Babu Ramesh Chunder Sen, for the respondent, was not called upon,

HARINGTON J. This is an appeal by the plaintiff whose suit for enhancement of rent has been dismissed by both the Courts of first instance and the lower Appellate Court. The facts are that the plaintiff and the defendants are howladars, the plaintiff having six annas of the howla and the defendants ten annas. The defendants took the undivided six annas of the howla from the plaintiff as his tenants and this in respect of this undivided six annas of the howla that the plaintiff seeks to obtain an enhancement of rent. The Munsif and the learned Judge of the lower Appellate Court held that the plaintiff was not in respect of this

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undivided six annas the landlord of a holding held at a money rent by an occupancy raiyat within the terms of section 30 of the Bengal Tenancy Act and on that ground, amongst others, dismissed the suit of the plaintiff.

Now, on behalf of the appellant it is contended, *first*, that this issue has been previously determined in favour of the plaintiff and that therefore under the rule of *res judicata* the Court was not entitled to dismiss his suit on this ground; and, *secondly*, it is argued that the plaintiff was the landlord of a holding within the terms of section 30 of the Bengal Tenancy Act.

Now with regard to the first question, a suit was previously brought, and it was held that in that suit the landlord was entitled to bring his action; but the suit was dismissed on the ground that the rent which it was sought to enhance was not lower than that of the surrounding lands. Therefore, judgment was given in favour of the defendants, although the defendants' objection to the competency of the suit was in fact overruled. In my opinion, the rule of *res judicata* does not apply to such cases. The judgment was passed in favour of the defendants and it was not open to them to appeal against the view of the Munsif who overruled the contention urged by them. If we were to hold that the rule of *res judicata* applied it would come to this that the defendants were bound by the decision of the first Court and were debarred from appealing against the view expressed against them because the decision was in their favour —the principal point which the Court decided against them not being a ground on which the suit was decided because the suit was decided in their favour. The defendants were, therefore, debarred from questioning the soundness of the decision. The rule of

res judicata cannot, therefore, be applied to this case.

Then on the second point, what is sought to be enhanced is the rent of an undivided six annas share of the howla and my view is that an undivided six annas is not a holding within the meaning of section 30 of the Bengal Tenancy Act. Under that Act "holding" is defined as a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy. I can understand no process of reasoning by which an undivided six annas can be described as a parcel or parcels of land because the use of the word parcel implies that the land in question has metes and bounds. The result is that an undivided six annas of the howla does not come within the definition of the word "holding" and therefore does not fall within section 30 of the Bengal Tenancy Act. The case is not without authority because the case of *Haribole Brohmo* v. *Tasimuddin Mondul* (1) is a case in which this very same question arose and there it was decided that an undivided 8 annas share was not itself a holding under section 30 of the Bengal Tenancy Act. On a consideration of the statute and the authority it seems to me that the appeal ought not to succeed. It is conceded that there is no authority in support of the interpretation which the appellant wants to put on the statute; and it is a very significant fact, as my learned brother points out, that although the decision in the case of *Haribole Brohmo* v. *Tasimuddin Mondul* (1) was given so far back as 1898 there is no subsequent amendment of the Act so as to, in any way, derogate the effect of that decision.

For these reasons, I hold that the decree of the lower Court ought to be affirmed and this appeal dismissed with costs.

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MOOKERJEE J. I desire to add a few observations, in view of the earnest endeavour made to upset what has been accepted as good law for at least 15 years.

The plaintiff and the defendants are howladars of a property; the share of the plaintiff is six annas and that of the defendants ten annas. The defendants have taken a raiyati lease from the plaintiff of his share of the property. The plaintiff now seeks, under section 30 of the Bengal Tenancy Act, to enhance the rent payable by the defendants. The Courts below have dismissed the suit. This decision is sought to be assailed by the plaintiff, appellant before this Court, on two grounds; namely, *first*, that the question of his right to enhance the rent of the defendants is *res judicata;* and, secondly, that upon a true construction of section 30 of the Bengal Tenancy Act, he has a right to enhance the rent of the defendants.

In support of the first contention, reference has been made to the decision in the earlier litigation between the parties when the plaintiff fruitlessly endeavoured to enhance the rent payable by the defendants. In that suit, it was decided in favour of the plaintiff that he had the right to enhance the rent of the defendants; but the suit was dismissed on the ground that the rent paid by the defendants was not lower than the rate at which rent was paid by tenants of adjoining lands. It has been argued on the authority of the case of *Peary Mohun Mukerjee* v. *Ambica Churn Bandopadhya* (1), that the decision in favour of the plaintiff upon the question of his right to enhance the rent is concluded by the judgment mentioned. That case, however, is clearly distinguishable. There it was ruled that when a

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decision has been based on two grounds either of which is sufficient to support the decree, the decision upon each of the grounds is conclusion between the parties. Here, however, the decision upon the question of the right of the plaintiff to enhance the rent is not the basis of the decree ultimately made. Consequently, it cannot be maintained under section 13 of the Code of Civil Procedure of 1882 that the question was directly and substantially in issue between the parties or was finally decided. This view is in accord with that taken in the case of *Thakur Magundeo* v. *Thakur Mahadeo Singh* (1). The first ground upon which the decision of the Court below is sought to be assailed cannot, therefore, be supported.

In support of the second ground, it has been contended that although the defendants held a share of the howla under the plaintiff, yet the plaintiff is the landlord of a "holding" within the meaning of section 30 of the Bengal Tenancy Act. Now the term "holding" as defined in clause (*9*) of section 3 of the Act means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy. Stress is laid, however, by the appellant on the introductory words of the section which provide that the definitions given are to apply unless there is something repugnant in the subject or context. But it has not been shown to us that there is anything in section 30 repugnant to the definition of the term "holding" given in clause (*9*) of section 3 of the Act. On the other hand, the cases of *Hari Charan Bose* v. *Runjit Singh* (2), *Baidya Nath De Sarkar* v. *Ilim* (3), *Haribole Brohmo* v. *Tasimuddi Mondul* and *Ahadulla* v. *Gagan* (4), conclusively show that an undivided share in a parcel or parcels of land cannot be a "holding". In

(1) (1891) I. L. R. 18 Calc. 647. (3) (1897) I. L. R. 25 Calc. 917.
(2) (1896) I. L. R. 25 Calc. 917 n. (4) (1902) 2. C. L. J. 10.

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fact a parcel of land is land defined by metes and bounds and consequently a share in a parcel of land cannot be deemed to be a parcel of land within the meaning of the definition of the term "holding". Reference has finally been made to the terms of section 5, clause (*2*) and section 3, clause (*5*) of the Bengal Tenancy Act, where definitions are given of the terms "raiyat" and "rent" respectively, and it has been pointed out that a raiyat may hold a share of a parcel of land for which he may be liable to pay rent to the landlord. That need not be disputed. But it does not follow that, when a raiyat holds a share in a parcel of land, he has a "holding" as defined in section 3, clause (*9*). The case of *Jardine, Skinner & Co.* v. *Rani Surut Soondari Debi* (1), where their Lordships of the Judicial Committee held that a right of occupancy might be acquired in respect of an undivided share of land under the Bengal Rent Law of 1868, and the decision of this Court in *Baidya Nath Mondal* v. *Sudharam Misri* (2), where a similar view was taken, are clearly of no assistance to the plaintiff, because what he has to establish is that he is the landlord of a "holding" within the meaning of the Bengal Tenancy Act. In my opinion, he has failed to do so.

Both the points urged fail, and the appeal must, therefore, be dismissed with costs.

S. C. G. *Appeal dismissed.*

(1) (1878) 3. C. L. R. 140. (2) (1904) 8. C. W. N. 751.