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the prior decree sufficiently supports the plea of *res judicata*.

The appeal must, therefore, be dismissed with costs.

D. CHATTERJEE, J. The fraud alleged in this case was the wrongful procurement by the defendant of the entry of the *nim-howla* in the record-of-rights. The same allegation was made in the rent suit, and the matter was adjudicated upon in the presence of both parties. It was a matter substantially in issue in that case, and I think it would be clearly offending against the rule of *res judicata* to allow the plaintiff to re-open that question. I agree, therefore, in dismissing this appeal.

S.M. *Appeal dismissed.*

CIVIL RULE.

Before Mookerjee and Beachcroft, JJ.

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BATA KRISHNA RANO

v.

JANKI NATH PANDE.*

Deposit in Court—Putni rent—Bengal Tenancy Act (VIII of 1885) ss. 54, 61, 62 (2), 195 (c)—Putni Regulation (VIII of 1819).

Section 61 of the Bengal Tenancy Act is applicable to a *putnidar*, as it does not in any way affect the Regulation VIII of 1819 relating to *putni* tenures, and it is open to him to deposit the *putni* rent in Court.

RULE obtained by Bata Krishna Rano, the plaintiff.

The facts are briefly as follows. The plaintiff

* Civil Rule No. 1478 of 1913, against the order of Chandra Bhushan Banerjee, Small Cause Court Judge, Berhampore, dated Sept. 27, 1913.

was the holder of a *putni* appertaining to mouza Harharia bearing touzi No. 491 of the Nadia Collectorate which, with another mouza called Chak Harharia, bearing touzi No. 233 of the Murshidabad Collectorate, originally belonged to the same proprietors who granted the aforesaid *putni*. At a revenue sale held in the year 1906, a share of the aforesaid Chak Harharia (for which separate account was opened in the Collectorate) was purchased by the Chandpur Co., Ld., which subsequently, on the 16th February 1907 by a registered *kobala*, sold the said share to the present defendant, who thereupon demanded rent of the aforesaid *putni* from the plaintiff representing that this *putni* appertained to the share of Chak Harharia purchased by him. The plaintiff *bona fide* believing these representations paid him the *putni* rent for a few years. But in rent suit, No. 793 of 1911, instituted by the defendant against some persons, it was held by the Court of first instance (and confirmed on appeal) that Chak Harharia was distinct from mouza Harharia and that the defendant by his purchase did not acquire any right to get rents from these persons, and that this *putni* appertained to mouza Harharia to which defendant had acquired no right by purchase. Thereupon the proprietors of mouza Harharia demanded rent of the aforesaid *putni* from the plaintiff and on his refusing to pay they instituted a suit for arrears of rent for the years 1907 to 1910 which was decreed on compromise. The plaintiff being in *bona fide* doubt as to who was entitled to the rent of the aforesaid *putni*, deposited rent for the year 1912 in the Munsif's Court at Berhampur under section 61, clause (*d*) of the Bengal Tenancy Act. On notice of this deposit being duly given, the defendant appeared in Court and made an application for the payment to him of the money deposited stating

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that if payment were not made to him he would within two weeks institute a suit for establishing his title to the zamindari right (under which the aforesaid *putni* was held) and to the money deposited. Thereupon the learned Munsif made the following order "Let the money be held in deposit till the parties establish their title by a regular suit," and gave the plaintiff a receipt for the money deposited by him. The defendant, however, applied to the Collector of Murshidabad under Regulation VIII of 1819 and obtained an order for recovery of arrears of rent for 1912, by summary sale of the aforesaid *putni*; whereupon the plaintiff, who had unsuccessfully objected, paid the amount claimed by the defendant, viz., Rs. 110-11-6 under protest to stay the *putni* sale. The plaintiff then brought this suit to get a refund of this money on the allegation that he had paid the amount under coercion. As the learned Small Cause Court Judge dismissed this suit the plaintiff moved the High Court and obtained this Rule.

Babu Brajendra Nath Chatterjee, for the petitioner. After the deposit under s. 61 of the Bengal Tenancy Act the opposite party had no right to put up the property to sale, and when the sale was stopped by fresh payment, it was paid twice over and this money must be refunded. S. 195 of the Bengal Tenancy Act does not affect the present case.

Babu Karunamoy Bose, for the opposite party. The deposit under s. 61 of the Bengal Tenancy Act did not affect my right under the *putni* law: *see* s. 195 of the Bengal Tenancy Act.

[MOOKERJEE J. Can you specify the particular provisions of Regulation VIII of 1819 which are affected by s. 61 of the Bengal Tenancy Act?]

The *putni* law gives the zamindar power to put up the property to sale unless the arrears are paid up to his own satisfaction. The deposit in the name of rival parties jointly is no payment under the putni law. The Collector was right in not accepting the deposit as payment and putting up the property to sale. The property put up to sale was one appertaining to touzi No. 233 of the Murshidabad Collectorate. The petitioner's case is that his *putni* belongs to touzi No. 491 of the Nadia Collectorate and not to the Murshidabad Collectorate at all. If so, his payment before the Collector to stop the *putni* sale was purely voluntary and no refund can be demanded under sections 67 and 70 of the Contract Act. Both parties contended in the lower Court that this matter could not be tried in the Small Cause Court as it involved questions of title to immoveable property. The whole procedure adopted by the petitioner shows want of *bona fides* and a scheme made up to put my client to trouble in collusion with the rival party. This is not a fit case for interference in revision. The matter should be settled once for all by a regular suit in the Civil Court.

MOOKERJEE AND BEACHCROFT JJ. This Rule raises an important question of first impression, namely, whether it is competent to a *putnidar* to avail himself of the provisions of section 61 of the Bengal Tenancy Act notwithstanding clause (*e*) of section 195. The circumstances under which the question arises for consideration are not disputed and may be briefly stated.

The plaintiff alleges that he holds a *putni* taluk, that on several occasions he had paid rent to the Mustaphis, that thereafter on the assertion that the estate had been sold for arrears of revenue and that

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the certified purchaser had conveyed title to him, one Janaki Nath Pandey, the present defendant, had realised rent from him on threat of proceedings under Regulation VIII of 1819, and that recently on the 11th December 1912 in a suit between the representatives of the original proprietors and the defendant, it was decided that the property was not comprised within the estate sold for arrears of revenue. The plaintiff asserts that, under these circumstances, he entertained a *bona fide* doubt as to who was entitled to receive the rent and that consequently he was entitled to make a deposit under clause (*e*) of section 61 of the Bengal Tenancy Act. He accordingly made a deposit on the 15th May 1913. Notice was thereupon issued to the rival claimants. One of these, the transferee from the purchaser at the revenue sale, entered appearance and prayed that the money deposited might be retained in Court as he intended to institute a suit within a fortnight for the establishment of his alleged right to the rent. A receipt was then granted to the plaintiff by the Court where the deposit had been made. The claimant, however, did not institute the suit. On the other hand, he took recourse to the summary procedure laid down in Regulation VIII of 1819, for recovery of arrears of rent. The consequence was that the plaintiff was constrained to deposit the money claimed to prevent the sale of his tenure. The plaintiff now sues to recover damages from the defendant on the allegation that at the time he was compelled to make the deposit to prevent the sale, there was no arrear due from him. The defendant resisted the claim on the ground that an arrear of rent was due from the plaintiff who was not competent to make a deposit under section 61.

It cannot be disputed, that section 61, literally construed by itself, is applicable to the case of the

plaintiff. It provides that when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent, he may present to the Court having jurisdiction to entertain a suit for rent of the tenure an application in writing for permission to deposit in Court the full amount then due. It is not questioned that the plaintiff is a tenant. It is also not seriously contested, and, upon the facts stated, it cannot be contested, that in the events which have happened, the tenant may entertain a *bona fide* doubt as to who is entitled to receive rent from him. Section 61 is, consequently, *prima facie* applicable. But reliance is placed, on behalf of the defendant, upon clause (*e*) of section 195, which provides that nothing in the Bengal Tenancy Act shall affect any enactment relating to *putni* tenures in so far as it relates to those tenures. The question, consequently, arises whether section 61 does in any way affect an enactment relating to *putni* tenures. We invited the learned vakil for the defendant to specify the particular provision of Regulation VIII of 1819, which is affected by section 61 of the Bengal Tenancy Act, but he was constrained to admit that he could not point out any such section. On the other hand, an examination of the provisions of Regulation VIII of 1819, indicates that there is no section which corresponds to section 54 of the Bengal Tenancy Act. If the Putni Regulation had contained a provision as to the time and place for payment of *putni* rent, it might have been plausibly argued that section 61 of the Bengal Tenancy Act, if applied to *putni* tenures, would affect the provisions of the Putni Regulation. On these grounds, we hold that section 61 is applicable to a *putnidar*, and it was open to the plaintiff to deposit in Court the *putni* rent in the manner he did. The consequences which follow from such a deposit are

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stated in sub-section (2) of section 62, which provides that a receipt given under the section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited, in the same manner and to the same extent as if that amount of rent had been received by the person entitled to rent. Consequently, at the time when the proceedings under Regulation VIII of 1819, were instituted at the instance of the defendant, there was no arrear of rent due from the plaintiff. The inference follows that the plaintiff is entitled to be indemnified on account of money paid under wrongful compulsion of legal process: *Fatima Khatoon* v. *Mahomed* (1), *Dulichand* v. *Ram Kishen Singh* (2), *Kanahya Lal* v. *National Bank of India, Ld.* (3).

The result is that this Rule is made absolute and the decree of dismissal made by the Court below set aside. The suit will stand decreed for the sum of Rs. 110-11-6 with interest thereon at the rate of 12 per cent. per annum from the 25th May 1913 up to this date. The sum decreed will bear interest at the rate of six per cent per annum from this date till realisation.

The plaintiff will also recover his costs both here and in the Court below with interest as usual.

G. S. *Rule absolute.*

(1) (1868) 12 Moo. I. A. 65.
(2) (1881) I. L. R. 7 Calc. 648 ; L. R. 9 I. A. 93.
(3) (1913) I. L. R. 40 Calc. 598 ; L. R. 40 I. A. 56.