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 GALSTAUN  
 v.  
 WOONES  
 CHANDRA  
 BONNERJEE.

which he would not otherwise be entitled under the law.

The result is that this Rule is discharged with costs.

S. K. B.

*Rule discharged.*

### APPELLATE CIVIL.

*Before N. R. Chatterjea and Sheepshanks JJ.*

1916  
 Aug. 29.

DURGA PRASANNA ROY

v.

ISHAN CHANDRA SHAHA.\*

*Common Manager—Bengal Tenancy Act (VIII of 1885), s. 95—Suit for general account after release of estate.*

Where a Common Manager appointed under s. 95 of the Bengal Tenancy Act resigned and the estate was released, and where it was found that his account had not been properly rendered and passed by the District Judge:—

*Held*, that he could be sued for account with the permission of the District Judge.

*Nabi Kishore Mandal v. Atul Chandra Chatterji* (1) distinguished.

SECOND Appeal by the plaintiff, Durga Prasanna Roy.

This appeal arises out of a suit for accounts brought by the plaintiff, Durga Prasanna Roy, against the defendant No. 1 Ishan Chandra Shaha and others. The plaintiff was one of the co-sharers of a joint estate of which the defendant No. 1 was appointed common manager under section 95 of the Bengal Tenancy Act. The said defendant No. 1 took up the duties of a

\* Appeal from Appellate Decree, No. 2367 of 1913, against the decree of Haridas Bose, Offg. Subordinate Judge of Pabna, dated April 23, 1913, reversing the decree of Phani Bhusan Banerji, Munsif of Pabna, dated April 27, 1912.

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common manager from the 22nd March 1907 and continued as such up to the 3rd June 1910. On or about the last mentioned date certain charges were made against the common manager before the District Judge, which it is unnecessary to recapitulate for the purposes of this report. As a result thereof the common manager had to resign his post on the 4th June 1910. The estate was released on the 30th November 1910. Permission is alleged to have been given to the proprietors to sue the common manager for accounts after the release of the estate. The plaintiff, thereupon, with the other co-sharers sued the said defendant No. 1 for accounts.

The Court of first instance decreed the suit. On appeal, the lower Appellate Court dismissed the suit, holding that the permission necessary for a suit of this nature did not extend to the appellant; that the suit was not maintainable, for the reason that the accounts of the defendant had already been regularly checked and passed in the office of the District Judge. From this decision the plaintiff preferred this appeal to the High Court.

*Babu Braja Lal Chuckerburty*, for the appellant.

*Babu Mahendranath Roy* and *Babu Jogendranath Mozumdar*, for the respondents.

*Babu Biraj Mohan Majumdar*, for the infant respondent.

*Cur. adv. vult.*

N. R. CHATTERJEA AND SHEEPHANKS JJ. In the case out of which this appeal arises, the plaintiff, one of the co-sharers in an estate for which a common manager had been appointed under section 95 of the Bengal Tenancy Act, sued the common manager for accounts after the release of the estate. The Court of first instance gave him a preliminary decree for

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accounts, but the lower Appellate Court has dismissed his suit, holding that the permission necessary for a suit of this nature had not been given by the District Judge, and also that the suit was not maintainable, for the reason that the accounts of the defendant had already been regularly checked and passed in the office of the District Judge. These two findings are challenged on second appeal.

As regards the former, the appellant relies on an order passed by the District Judge in releasing the estate, which runs "permission to sue the common manager is granted." He contends that this permission extends to all the co-sharers, himself included. The respondent on the other hand argues that, because the proceedings in the course of which this order was made originated with a petition presented by certain individual co-sharers, the permission must be held to be restricted to them alone, and that the plaintiff not having been one of them is not entitled to sue. In our opinion the contention of the appellant must prevail.

All the co-sharers were made parties to the proceeding in question; all of them had an equal interest in suing the common manager if there appeared to be grounds for so doing; the permission given is not restricted either to any individual co-sharers or to all the co-sharers suing jointly, and anyone or more of the co-sharers were therefore entitled to avail themselves of it. The permission was clearly intended to remove altogether the bar which without it would have stood in the way of any suit, such as the present one, being brought against the common manager.

As regards the second point, the lower Appellate Court has relied on *Naba Kishore Mandal v. Atul Chandra Chatterji* (1). The facts, however, of that

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case are entirely different from those of the present one. In the former it was found that objections had been put into the accounts filed, and that after those objections had been considered and disposed of, the accounts were passed by the District Judge. In the present case there is nothing to show that the accounts were passed by the District Judge except a general statement to that effect, giving no details as to the manner in which they were passed, in the evidence of the defendant No. 1 himself. That they were not in fact passed in any sense in which the term can properly be used is made perfectly clear by the evidence of the defendant No. 1 himself, from which it appears that two gentlemen in succession were specially appointed to check them, that the former of them returned them without being able to complete his check, and the latter conducted an enquiry into them for 2 or 2½ months, also without any definite result, and that the defendant No. 1 was suspended for delay in submitting his budget. It is further made clear by the fact that the District Judge, having these accounts and the result of the two enquiries before him, granted the permission to sue in general terms, without excepting any portion of the period for which accounts had been filed. We, therefore, hold that the authority above referred to has no application to the facts of the present case, and that the lower Appellate Court was mistaken in holding that the plaintiff was not entitled to sue for a general account.

The result is that the appeal succeeds. The decree of the lower Appellate Court is set aside, and that of the Court of first instance is restored. Costs will abide the result.

L. B.

*Appeal allowed.*

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