

be that the suit is not barred by the one year's rule of limitation laid down in section 24 of Regulation II of 1819.

CHATTERJEA J I agree.

RANKIN J I agree.

SUHWARWARDY J I agree.

PANTON J. I agree.

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1926  
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 OF STATE  
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**FULL BENCH.**

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*Before Sanderson C. J. Chatterjeu, Rankin, Suhrawardy and Panton JJ.*

HARIDAS MAJUMDAR

*v.*

GOLAM MAHIUDDIN FARQUL\*

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 May 18.

*Reference to Full Bench—Full Bench reference in second appeal—Disposal power of—Practice—Reference abortive—Remand to Division Bench.*

When the reference is in a Second Appeal and the question, which has been referred to the Full Bench, is decided by the Full Bench, then the Full Bench disposes of the Second Appeal. But it appears to be the practice that when the Full Bench considers that the point, which has been referred, does not arise, the matter is referred to the Division Bench for disposal.

REFERENCE to Full Bench made in Second Appeals preferred by Haridas Mazumdar and others, defendants.

\* Full Bench Reference No. 3 of 1925. in Appeals from Appellate Decrees Nos. 1174, 1180, etc., of 1923, against the decrees of J. Bartley, Special Judge of Tippera, dated Aug. 17, 1922. affirming the decrees of Mahomed Ali Azam, Assistant Settlement Officer of Tippera, dated Sep 25 1920.

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The facts of the cases out of which these appeals arise appear from the referring judgment of Suhrawardy and Mukerji JJ., the relevant portions of which are as follows :—

“ These appeals arise out of applications made by the landlords for settlement of fair and equitable rents under the provisions of section 105 of the Bengal Tenancy Act. The claim is based on additional rent for excess area and enhancement for the rise in prices of staple food crops. The appeals may be conveniently classed into three groups. . . . The plaintiff's application having been granted in both the Courts below, the defendants have preferred these appeals.

“ In the first group of appeals two points have been urged on behalf of the appellants. *First*, the learned Special Judge has erroneously presumed that the areas of the holdings had been entered in the documents after measurement; and *second*, that the standard of measurement, if any measurement was made at the inception of the tenancies, has not been proved.

“ These appeals therefore fail and must be dismissed with costs.

“ In the second group of appeals the same questions arise as in the first and in addition thereto another ground is urged to the effect that the learned Judge has erroneously refused to give the defendants the benefit of the presumption which arises under section 50, sub-section (2) of the Act.

“ For the foregoing reasons the appellant's additional contention in this group of appeals, in our opinion, succeeds and the decision of the Special Judge should be set aside and the appeals remitted to his Court so that they may be reheard with reference to the above question and disposed of, having regard to the remarks made above. Costs of those appeals should abide the result.

“ The grounds urged in the third group of appeals are three in number. The first two grounds are the same as in the first group, and for the reasons which have been given when dealing with that group we are unable to entertain them as well-founded. There remains a third ground which has been urged in these appeals. That ground is to the effect that the plaintiff is not a 16 annas landlord but only a co-sharer landlord so far as these cases are concerned, and therefore the applications are not maintainable. There is a strong body of authorities in which it has been held that by reason of the provisions of section 188 of the Bengal Tenancy Act, an application under section 105 of the Act is maintainable only at

“ the instance of the entire body of landlords [*Krishna Das Lax v. Paresh Sardar* (1); *Behari Lal Mallik v. Priya Nath Sardar* (2)] though a  
 “ contrary view has sometimes also been taken [e.g., *Dhananjoy Manjhi v. Upendra Nath Deb Sarbadhikary* (3)], on the ground that a suit to  
 “ assess rent is consistent with and arises out of the general law and the land  
 “ revenue system of the country and therefore section 188 of the Bengal  
 “ Tenancy Act is no bar to such a suit by a co-sharer landlord. In the  
 “ case of *Kali Charan Singha v. Mahammad Ismail Choudhury* (4), it was  
 “ held that if the application for settlement of rent was filed by all the joint  
 “ landlords, the withdrawal of one of them does not render the proceedings  
 “ invalid so as to defeat the application of the other joint landlords. In the  
 “ present case however, it seems to be undisputed that the plaintiff has  
 “ been collecting his share of the rents separately and that this has been  
 “ going on for a sufficient length of time to justify the inference that there  
 “ is the relationship of landlord and tenant as between the parties in respect  
 “ of a separate tenancy and as the word ‘ holding ’ does not occur in section  
 “ 105, but the word ‘ land ’ is used, there is apparently no bar to the  
 “ maintainability of the suit on that ground. In the case of *Siferuddi v. A. K. Fazul Huq* (5), D. CHATTERJEE J. held that when a co-sharer landlord  
 “ has obtained a separate kabuliati in respect of his undivided share, he  
 “ alone is entitled to make an application under section 105. The execution  
 “ of a kabuliati, however, is not an essential requisite for the creation of the  
 “ relationship and such relationship may also be inferred from separate  
 “ collection for a number of years or from other circumstances. There is  
 “ a clear conflict of judicial opinion on the question as to whether a co-sharer  
 “ landlord, who collects his share of the rent separately from the other co-  
 “ sharers, is a joint landlord within the meaning of section 188 of the Bengal  
 “ Tenancy Act. In several cases it has been held that, where the tenant has  
 “ agreed to allow one of several co-sharer landlords to deal with him as his  
 “ own tenant without reference to the rights of the other co-sharer landlords,  
 “ the effect is to create a separate tenancy under such fractional co-sharer,  
 “ and the provisions of section 188 are inapplicable [*Panchanan Banerji v. Raj Kumar Guba* (6), *Govind Chandra Pal v. Hamidulla Bhusan* (7)].  
 “ A contrary view has been taken in the cases of *Gopal Chunder Das v. Umesh Narain Choudhury* (8), *Hari Charan Bose v. Runjit Singh* (9) and  
 “ *Baidya Nath De Sarkar v. Him* (10). In a number of other cases decided by  
 (1) (1909) 10 C. L. J. 458. (6) (1892) I. L. R. 19 Calc. 610  
 (2) (1914) 21 C. L. J. 305 (7) (1903) 7 C. W. N. 670.  
 (3) (1918) 22 C. W. N. 685 (8) (1890) I. L. R. 17 Calc. 695.  
 (4) (1924) I. L. R. 52 Calc. 139. (9) (1896) I. L. R. 25 Calc. 917  
 (5) (1914) 21 C. L. J. 592. (foot-note).

(10) (1897) I. L. R. 25 Calc. 917.

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" this Court it has been laid down that the cancellation or determination of  
" the original tenancy is not to be presumed from the mere fact of separate  
" payment of rent to one or more of the co-sharers. The authorities bearing  
" upon those questions are numerous and conflicting. We are of opinion  
" that this conflict should be set at rest and it should be authoritatively  
" laid down—

" (i) as to whether a co-sharer, collecting his own share of the rent  
" separately from the other co-sharer or co-sharers, is a joint landlord with-  
" the meaning of section 188 of the Bengal Tenancy Act

" (ii) and whether such a co-sharer is entitled to make an application  
" under section 105 of the Act.

" We accordingly refer these cases to the Full Bench under the provi-  
" sions of Rule I, Chapter VII of the High Court Rules. As the question  
" arises in Second Appeals, *the whole cases are referred to the Full Bench*  
" with an expression of our opinion on the other two points raised in them  
" as stated above."

*Mr Atul Chandra Gupta* (Advocate) and *Babu Bhagirath Chandra Das*, *vakil*, for the appellant.

This group of eight appeals arise out of proceed-  
ings under section 180 of the Bengal Tenancy Act by  
the respondent landlord for settlement of fair rent or  
enhancement of rent for excess area and for rise in  
prices of staple food crops. The Division Bench  
divided these appeals into three groups and have  
referred the third group to the Full Bench.

*The Assistant Government Pleader (Babu Surendra Nath Guha)*, for the respondent. I have a preliminary objection that the question referred to the Full Bench does not arise as the application for settlement of fair and equitable rents was not made in these cases, for when this application was made the entire interest was in the applicant. Reads judgment of Assistant Settlement Officer. There is a mistake in the printed paper-book—"plaintiffs" should be "plaintiff". Reads judgment of lower Appellate Court, *i.e.*, the Special Judge, at page 13: "I have observed that plaintiff is now the 16 annas proprietor."

These proceedings were started in 1919. Mr. Narruddin Ahmed, the then Assistant Government Pleader, argued for the respondent before the referring Bench (Suhrawardy and Mukerji JJ.) and Dr. S. C. Basak argued for the appellant there. Unfortunately neither is present here before the Full Bench.

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[SUHRAWARDY J. I don't remember exactly now what happened then, but a lot of cases were cited before me.]

[SANDERSON C. J. Turn to page 2 of reference and to the fourth ground of appeal at page 19.]

I don't see how the question can arise.

[SANDERSON C. J. We will hear the other side as to this objection.]

*Mr. Atul Chandra Gupta* for appellant in reply to preliminary objection. These questions have to be decided in the case of every application under section 180, Bengal Tenancy Act. Nothing was said by Babu Surendra Nath Guha to the referring Bench though he was present when judgment was delivered.

[SUHRAWARDY J. We might in that case have sent back these appeals.]

[*Babu Surendra Nath Guha*.—Mr. Farqui has since written to me to say he does not know how this point can be raised before the High Court.]

[SANDERSON C. J. I am in the same position as he is.]

[SUHRAWARDY J. At page 13 there is a statement about co-sharers.]

I am constrained to say there is no finding.

[SANDERSON C. J. Is not the statement of the Special Judge as clear as possible and we can't go behind that.]

I agree. But the other question has not been decided by the referring Bench.

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[SANDERSON C. J. The whole case is referred to Full Bench in Second Appeals.]

But when the Full Bench holds the reference does not arise, the practice is to send the case back to the referring Bench for decision on those points. Only when the Full Bench decide the reference, then they decide the whole Second Appeal also.

SANDERSON C. J. This is a Reference by two of my learned brothers in certain Second Appeals.

The appeals were divided by the learned Judges into three groups, and it was the third group of appeals, to which the questions, which were referred, related.

The questions were as follows: (i) Whether a co-sharer collecting his own shares of the rent separately from the other co-sharer or co-sharers is a joint landlord within the meaning of section 188 of the Bengal Tenancy Act, and (ii) whether such a co-sharer is entitled to make an application under section 105 of the Act.

The proceedings were initiated by the landlord under section 105 of Bengal Tenancy Act and it appears from the judgment of the Assistant Settlement Officer that it was an admitted fact that the shares of the entire taluk passed into the hands of the plaintiff's predecessor gradually by sale

The judgment of the learned Special Judge of Tippera with regard to this point was as follows:—  
“The plaintiff is 16 annas proprietor of a patni taluk in which the tenancies are situated and claimed enhancement of rent under section 30 (b) and additional rent under section 52.” In another part of his judgment the learned Judge said as follows:—“I have observed that the plaintiff is now 16 annas proprietor but he has been so only since 1312 B. S.”

The learned Vakil, who appeared for the respondent, drew our attention to these passages in the two judgments and argued that the point involved in the two questions, which had been referred to the Full Bench, did not arise.

In my judgment, as far as the present proceedings are concerned, this Court is bound by the above-mentioned findings as to the position of the respondent and it must therefore be taken that the respondent was not a co-sharer but that he was the owner of the patni taluk to the extent of 16 annas.

It appears that there must have been some misunderstanding, when the matter was before my learned brothers, constituting the Division Bench, for I am of opinion that the questions which have been referred do not arise.

When the reference is in a Second Appeal and the question, which has been referred to the Full Bench, is decided by the Full Bench, then the Full Bench disposes of the Second Appeal. But it appears to be the practice that when the Full Bench considers that the point which has been referred does not arise, the matter is referred to the Division Bench for disposal.

For these reasons, in my judgment, these appeals must be remanded to the Division Bench for disposal.

CHATTERJEA J. I agree.

RANKIN J. I agree.

SUBHAWARDY J. I agree.

PANTON J. I agree.

*Appeals remanded.*

G. S.

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SANDERSON  
C. J.