

CIVIL REVISION.

Before Nasim Ali and Rau J.J.

1939
Nov. 22.

JAGADISH CHANDRA SINGHA

v.

ISHAN KUMARI DEBI.*

Landlord and Tenant—*Patni tenure*—*Division of tenancy or distribution of rent*—*Jurisdiction of Court*—*Patni Tāluks Regulation (VIII of 1819), ss. 6, 11*—*Bengal Tenancy Act (VIII of 1835), ss. 88, second prov. ; 195, cl. (e).*

A civil Court has no power to order distribution or apportionment of the rent of a *patni* tenure amongst the co-sharer *patnidārs* according to their shares. Section 88, second proviso of the Bengal Tenancy Act before amendment in 1938 is not applicable to *patni* tenures, as it affects s. 6 of the *Patni Regulation*, which is saved by s. 195, cl. (e) of the Bengal Tenancy Act.

Per RAU J. There is also a clear declaration in s. 11 of the *Patni Regulation* that the *zemindār* has an indefeasible right to hold a *patni* tenure answerable, in the state in which he created it, for the rent of the tenure.

Sreenath Chunder Chowdhry v. Mohesh Chunder Bundopadhya (1) distinguished.

CIVIL RULE obtained by the *zemindār* under section 115 of the Code of Civil Procedure.

The facts of the case are sufficiently stated in the judgment.

Gopendra Nath Das, Biraj Mohan Roy and Ramendra Mohan Chatterjee for the petitioner. The *Patni Regulation* is a code in itself and provides for the governance of *patni* tenures. Under the whole scheme of the Regulation, the *zemindār's*

*Civil Revision, No. 1316 of 1939, against the order of Biman Bihari Sarkar, Subordinate Judge of Jessore, dated Aug. 3, 1939, affirming the order of Ghulam Azam Chaudhuri, Second Munsif of Narail, dated Mar. 31, 1939.

rights to have his security for rent intact is provided for, for example, in ss. 6 and 11. On the other hand, s. 195, cl. (e) of the Bengal Tenancy Act saves *patni* tenures. Section 88, second proviso, therefore is not intended to apply to *patni* tenures and the Court has no power to entertain an application for apportionment of rent among *patnidárs*.

Nagendra Nath Dutt for the opposite party. The rent of a *patni* tenure has been regarded as divisible even from before the passing of the Bengal Tenancy Act. *Sreenath Chunder Chowdhry v. Mohesh Chunder Bundopadhya* (1). The apportionment of the rent under s. 88, second proviso, of the Bengal Tenancy Act, therefore, cannot be said to affect the *Patni* Regulation.

NASIM ALI J. The point for determination in this case is whether the civil Court has power under s. 88, second proviso, of the Bengal Tenancy Act to apportion the rent of a *patni* tenure amongst the co-sharer *patnidárs* according to their share.

The Courts below have come to the conclusion that s. 88, second proviso, applies to *patni* tenures. The second proviso to section 88, is in these terms:—

The civil Court, on an application made on that behalf by the tenant within six months from the date of notice to the landlord hereinafter provided, by an order in writing direct such division of the tenancy or distribution of rent as it considers fair and equitable or annul or modify the division or distribution made by the landlord, if considered unfair and inequitable.

Then follow certain provisos, which are not material for the purpose of the present case. Section 195, cl. (e) of the Bengal Tenancy Act, so far as is material for the purpose of the present case, runs as follows:—

Nothing in this Act shall affect any enactment relating to *patni* tenures in so far as it relates to those tenures.

The question, therefore, arises as to whether s. 88, second proviso, of the Bengal Tenancy Act affects any

1939

*Jagadish
Chandra Singha
v.
Ishan Kumari
Debi.*

1939

*Jagadish
Chandra Singha*

v.

*Ishan Kumari
Debi.*

Nasim Ali J.

provisions contained in the *Patni* Regulation. Section 6 of the *Patni* Regulation provides :—

It shall be competent to the *zemindâr* or other superior to refuse the registry of any transfer until the fee above stipulated be paid, and until substantial security to the amount specified be tendered and accepted :

Provided, however, that if the security tendered by any purchaser or transferee should not be approved by the *zemindâr*, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the *zemindâr* to accept it, and give effect to the transfer without delay.

It is hereby provided that the rules of this and of the preceding section shall not be held to apply to transfers of any fractional portion of a *patni tdluk*, nor to any alienation other than of the entire interest ; for no apportionment of the *zemindâr's* reserved rent can be allowed to stand good unless made under his special sanction.

The last clause of this section definitely lays down that the rent reserved by the *patni* lease cannot be apportioned without the special sanction of the *zemindâr*. If s. 88, second proviso, be made applicable to *patni* tenures, it would affect the last portion of s. 6 of the *Patni* Regulation. I am, therefore, of opinion that under s. 88, second proviso, the civil Court has no power to order distribution or apportionment of the rent of a *patni* tenure.

In the case before us the learned Subordinate Judge has also observed that the *Patni* Regulation does not apply to the tenure in question as it is not a *patni* within the meaning of that Regulation. The *patni* lease was not before the lower appellate Court. The learned advocate for the *zemindâr* petitioner, however, produced before us the original *patni kabuliyat*. It is clear from the terms of that *kabuliyat* that the tenure created by it is a *patni* as contemplated by Regulation VIII of 1819. The Courts below were, therefore, wrong in allowing the co-sharer *patnidâr's* application for apportionment of the *patni* rent.

The result, therefore, is that this Rule is made absolute, the orders of the Courts below are set aside and the application of the opposite party *patnidâr*

for distribution of the *patni* rent under s. 8 of the *Patni* Regulation is dismissed.

There will be no order for costs in this Rule.

RAU J. I agree. Besides the provisions of s. 6 of the *Patni Táluk* Regulation, there is another relevant provision in s. 11 of the Regulation, which, after declaring that a *patni táluk*, when sold for arrears of rent due on account of it, passes free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, goes on to state—

No transfer by sale, gift or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the *zemindár* to hold the tenure of his creation answerable, in the state in which he created it, for the rent, which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such *zemindár*.

There is thus a clear declaration in the provision that the *zemindár* has an indefeasible right to hold a *patni* tenure answerable in the state in which he created it for the rent of the tenure.

The distribution of the rent of a *patni táluk* amongst the various co-sharer-holders would be plainly repugnant to this provision of the Regulation unless made with the *zemindár's* sanction. The effect of such a distribution is to apportion the liability for the rent amongst the various co-sharer tenants, so that the tenure, in the integral state in which it was created, would no longer be answerable for its entire rent.

It has been contended on the other side that the decision in the case of *Sreenath Chunder Chowdhry v. Mohesh Chunder Bundopadhya* (1), which is a decision of the year 1878 when the *Patni Táluk* Regulation was in force but not the Bengal Tenancy Act, shows that the rent of a *patni* tenure was even then regarded as divisible and, therefore, it is argued, the apportionment of the rent under s. 88, second

1939

Jagadish
Chandra Singha
v.
Ishan Kamari
Debi.

1939

*Jagadish
Chandra Singha*
v.
*Ishan Kumari
Debi.*
Rau J.

proviso, of the Bengal Tenancy Act cannot be said to affect the Regulation. An examination of the decision in question shows, however, that that case related to the apportionment, as between the co-sharer *zemindárs*, of the right to receive the *patni* rent, and not to an apportionment, as between the co-sharer *patnidárs*, of the liability to pay the *patni* rent. It is only the latter type of apportionment that is in question in the present case and that is repugnant to the declarations in ss. 6 and 11 of the Regulation. The decision is, therefore, of no assistance to the other side.

Rule absolute.

A. A.