

plaintiff's suit. If, he finds this issue in the negative, he will order the account to be taken for the period of time and as directed by the learned Judge Mr. Field.

The appeal is allowed. Costs of the appeal and the trial on the remand will abide the result.

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SHAD CHATTO-  
PADHYA  
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BHUTTA-  
CHARJEE.

*Appeal allowed and Case remanded.*

*Before Mr. Justice Jackson and Mr. Justice Tottenham.*

GUNGANARAIN SIRKAR AND ANOTHER (PLAINTIFFS) v. SREENATHI  
BANERJEE (ONE OF THE DEFENDANTS).\*

1880  
*Jan. 15.*

*Co-Sharer—Suit for Fractional Share of Rent.*

The plaintiff, alleging himself to be a fourteen-anna shareholder in a zemindari, sued a tenant for a proportionate share of the rent due to him as such shareholder. The other co-sharers were made defendants, but did not contest the suit; *held*, that inasmuch as it had been shown that the tenant-defendant had, on previous occasions, paid the plaintiff rent separately, though not in the proportionate share now demanded by him, and it being further to be presumed that the co-sharers admitted the plaintiff's claim, such suit would lie.

THIS was a suit for recovery of arrears of rent and interest thereon for a period extending from Bysak 1281 (April 1874) to Choitro 1283 (March 1877).

The plaint stated that the plaintiffs were part-owners to the extent of a fourteen-anna share in a certain zemindari; that the tenant-defendant in suit held a lease of certain specified lands in that zemindari; and that the amount claimed represented arrears of rent due to the plaintiffs from that defendant in respect of their fourteen-anna share in such zemindari. The plaintiffs' co-sharers in the zemindari were made defendants in the case, together with the tenant, from whom such arrears of rent were claimed. The tenant-defendant (who alone entered appearance),

\* Appeal from Appellate Decree, No. 661 of 1879, against the decree of H. Beverley, Esq., Additional Judge of Zilla 24-Pargannas, dated the 27th of December 1878, affirming the decree of Baboo Benode Behari Chowdhry, Munsif of Baranipore, dated the 4th July 1878.

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in his written statement, contended, that the suit would not lie, all the co-sharers not having instituted such suit; and further, that the plaintiffs were not the owners of a fourteen-anna share of the zemindari. The defendant also denied that any agreement existed between him and the plaintiffs to pay rent separately calculated, on the admission that such plaintiffs were fourteen-anna shareholders, nor in fact had any such rent ever been paid.

The Court of first instance was of opinion that there was no evidence to show that the plaintiffs were fourteen-anna shareholders, nor that the defendant had ever paid or agreed to pay rents to the extent of this share separately, and therefore dismissed the suit.

The lower Appellate Court was of opinion, that it was proved that the defendant had paid the plaintiffs fractional shares, of rent due, but that these fractional shares had varied in proportion; the previous decrees filed showing that the plaintiffs had on different occasions sued the defendant as a thirteen-anna, an eleven-anna eighteen gaudas three kraits, and a thirteen and three quarters anna holder. Inasmuch, however, as the plaintiffs had failed to show that they had ever collected a fourteen-anna share of the rent, the Judge held they could not succeed in the present suit, merely by making the other co-sharers defendants in the suit.

The plaintiffs appealed to the High Court.

*Baboo Jogesh Chunder Roy* for the appellants.

*Baboo Bama Churn Banerjee* for the respondent.

The judgment of the Court (JACKSON and TOTTENHAM, JJ.) was delivered by

JACKSON, J.—Upon the precise question raised in this appeal, no previous ruling has been brought to our notice. The plaintiffs are some of several co-sharers who, indeed, owned much the larger portion of the estate. The defendant Sreenath holds land under all the co-sharers, and he previously paid rent to the plaintiffs according to the shares which they from time to time

claimed; but in the present suit they claimed a larger share than they appear to have received before,—that is, they claimed fourteen annas, whereas in previous years they obtained decrees for thirteen and-a-half annas, for eleven annas eighteen gandas, and for thirteen and three-fourth annas. In this state of the facts the Judge observes:—“It still remains for the plaintiffs to prove that their share is fourteen ‘annas;’ and further on:—“It seems to me, therefore, that the plaintiffs having failed to prove that they have been collecting a specific fourteen annas share of the rent before, cannot succeed in the present suit, merely by reason of making certain other co-sharers defendants in the suit.” The co-sharers, as stated by the Judge, are parties to the present suit, and they have not appeared at any stage of the litigation. It is contended now, in support of this judgment, that, in the circumstances, the plaintiffs were bound to sue for the whole rent, making the other co-sharers parties defendant. That course, however, is only laid down for cases where there has been no previous payment by sharers, and where the plaintiff seeks for the first time to obtain a decree in respect of what is due to him; but in the present case there have been previous payments: and it appears to us that it was not necessary to take that course. Besides, the co-sharers being the only persons interested in disputing the amount of the plaintiffs’ share, have not entered appearance, and have not questioned the share which the plaintiffs claim. It seems to us, therefore, that there was no necessity for raising an issue as to the amount of that share, and the plaintiffs, consequently, were not bound to offer proof, because, as before observed, the only persons interested in raising that question having acquiesced in the plaintiffs’ statement, and being bound by the decision, the tenant-defendant ran no risk of being called upon to pay again any part of the share adjudged to the plaintiffs. It appears that the defendant had not been served with notice to pay rent as for the share of fourteen annas.” If in these circumstances the defendant simply answered that he had paid or was willing to pay and now paid into Court the amount last recovered by the plaintiff, which appears to have been eleven annas eighteen gandas three krants, the plaintiffs’ suit might, with some justice,

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have been dismissed, or at any rate, they would have a decree for no more than what would appear to be so payable. But he has not taken that course. He has not paid a single pice of the rent of the year? It appears to us, therefore, that the plaintiffs are entitled to a decree as for fourteen annas share of this rent. As the plaintiffs have not given notice to pay fourteen annas, we think there should be no costs. Each party will pay his own costs throughout.

*Appeal allowed without costs.*

*Before Mr. Justice Jackson and Mr. Justice Tottenham.*

1880  
Feb. 12.

GUADADHUR PAUL CHOWDHRY AND OTHERS (PLAINTIFFS) v. BHY-  
RUB CHUNDER BHUTTACHARJI AND ANOTHER (DEFENDANTS)\*

*Document more than thirty years old—Legal Presumption—Previous production of such Document—Evidence.*

No legal presumption can arise as to the genuineness of a document more than thirty years old, merely upon proof that it was produced from the records of a Court in which it had been filed at some time previous. It must be shown that the document had been so filed in order to the adjudication of some question of which that Court had cognizance, and which had come under the cognizance of such Court.

THIS was a suit for the recovery of certain lands obtained by the defendants from the plaintiffs under a proceeding instituted under s. 15 of Act XIV of 1859.

The plaint stated, that Parganna Barodakhat, in which the disputed lands were situate, was purchased by the Government at an auction-sale for arrears of revenue, and subsequently settled with one Imam Buksh Bepari for a term of years; that, on the 28th of October 1864, Imam Buksh had sold his settlement right to the plaintiffs, who had thus become the rightful owners of the property; that the land in dispute, at one time waste, had, within the last four years, been brought into cultivation

\* Appeal from Appellate Decree, No. 1067 of 1879; against the decree of P. Dickens, Esq., Judge of Dacca, dated the 3rd March 1879, affirming the decree of Baboo Gobind Chunder Bysak, Officiating Munsif of Kallygunge, dated the 4th June 1878.