

## FULL BENCH

*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Jackson, Mr. Justice Pontifex, Mr. Justice Morris, and Mr. Justice Mitter.*

1880  
June 1.

ISHWAR CHUNDER DUTT AND OTHERS (PLAINTIFFS) v. RAM KRISHNA DASS (DEFENDANT).\*

*Apportionment of Rent—Purchaser of a Share in a joint Tenure—Severance of Tenure by Sale of Share—Co-Sharers—Parties.*

A sale of a share in a tenure, let out to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an apportionment of the rent; but if a purchaser of the share desires to have such a severance, he is entitled to enforce it. If he takes no steps for that purpose, then the tenant is justified in paying the entire rent to all the parties jointly entitled to it. But if the purchaser desires to effect a severance of the tenure and an apportionment of the rent, he must give the tenant due notice to that effect, and then if the parties cannot agree to an apportionment, the purchaser may sue the tenant for the purpose of having the rent apportioned, making all the other co-sharers parties to the suit.

It is impossible upon principle to distinguish cases where a tenure is sold privately from those where it is sold by public auction, or, on the other hand, to distinguish cases where a tenure is severed by different portions of its area being sold to different persons, from those where it is sold to different persons in undivided shares. In all such cases the entirety of the joint interest should be considered as severable at the option of the purchaser.

THIS case came up on appeal under s. 15 of the Letters Patent before Garth, C. J., and Mitter, J., and was referred by their Lordships to a Full Bench. The referring order setting out so much of the case as is necessary for the purposes of this report, was as follows :

“The admitted facts appear to be these: The defendant is the tenant of a certain tenure, which originally belonged to Ramgopal Nundi and Hurokristo Nundi in equal shares. Ramgopal Nundi's eight-anna share then came by inheritance

\* Reference to a Full Bench on Letters Patent Appeal No. 873 of 1879, from Spécial Appeal No. 873 of 1879, from a decision of Mr. Justice Morris dated 29th August 1879, reversing the decision of Baboo Kedarnath Muzumdar, Officiating Second Judge of Mymensing, dated the 29th January 1879.

to one Komolakant, and Komolakant sold a four-anna share out of the eight annas to the plaintiffs' uncle, from whom the plaintiffs acquired it as their uncle's heir.

"The defendant has paid rent to Komolakant for his four-anna share, but has never paid any rent to the plaintiffs in respect to the four annas: and he denies the plaintiffs' right to sue for such rent, insisting that he has hitherto paid rent for four annas of the entire tenure to Komolakant, and for the remaining twelve annas to Rhedoy and others, who claim under Hurokristo Nundi.

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"In this state of the facts it has been decided, as a matter of law, by a Division Bench of this Court, that although Komolakant was entitled to an eight-anna share of the tenure and conveyed four annas of that share to the plaintiffs' uncle, and although the plaintiffs are undoubtedly entitled to that four annas as their uncle's heirs, they have no right to sue the defendant for the rent of it, until some engagement has been entered into between them and the defendant, creating the relation of landlord and tenant, and rendering the defendant liable to pay the rent of the four-anna share to the plaintiffs.

"It was decided in the Full Bench case of *Guni Mahomed v. Moran* (1), that one shareholder of an entire tenure cannot bring a suit to enhance the rent of his separate share, or for a kabuliat, merely upon the ground that, by arrangement with the other shareholders, his rent has been paid separately. But here the plaintiffs derive title to a four-anna share of the tenure by a legal conveyance, and the questions which we desire to refer to a Full Bench are—

"1st. Whether, under such circumstances, the tenure is not severed in the same way as it would be under a partition made by the Collector? and

"2nd. Whether the plaintiffs, assuming the rents claimed not to have been paid by the defendant to any of the other shareholders, are entitled to recover in this suit the proportionate rent of the share conveyed, although there has been no engagement or consent by the defendant to treat the plaintiffs as his landlords? See *Indromoni Burmani v. Surup Chunder Paul* (2), *Sarat*

(1) I. L. R., 4 Calc., 96. (2) 12 B. L. R., 291; S. C., 15 W. R., 396.

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*Sundari Dabia v. Anund Mohun Ghuttuck* (1), and *Banee madhub Ghose v. Thakur Doss Mundul* (2)."

Baboo *Jogesh Chunder Roy* for the appellants.—It is admitted that a four-anna share of the rent has been paid to Komolokant, and my contention is, that the plaintiffs are entitled to sue for the balance. See the cases of *Doorgachurn Surmah v. Jampa Dasse* (3), *Sreenath Chunder Chowdhry v. Mohesh Chunder Bundopadhya* (4), *Sarat Sundari Dabia v. Anund Mohun Ghuttuck* (1), *Anmodachurn Roy v. Kally Coomar Roy* (5), and an unreported Special Appeal, No. 534 of 1874, decided on the 4th July 1878.

Baboo *Aukilchunder Sen* for the respondent.—It has not been shown that this tenure has been severed in the same way as it would have been under a partition made by the Collector. Moreover, the plaintiffs have not made their co-sharers parties to the suit. A single co-sharer cannot sue for his share of the rent—*Bhyrub Mundul v. Gogaram Banerjee* (6), *Kallee Churn Singh v. Solano* (7). It may be that if the plaintiffs had made the other co-sharers parties they might have recovered on the authority of *Jadu Dass v. Sutherland* (8), but they have not done so.

Baboo *Jogesh Chunder Roy* in reply.—No objection can be taken at this stage of the proceedings as to the other sharers not having been made parties to the suit—s. 34 of Act X of 1877.

The opinion of the Full Bench was delivered by

GARTH, C. J.—It appears to us that, having regard to the weight of authority in this Court, as well as to the question of principle and convenience, the proper solution of the points referred to us is as follows :

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| (1) <i>Ante</i> , p. 273.                     | (4) 1 G. L. R., 453.               |
| (2) B. L. R., Snp. Vol. 589; S. C., 6 W.      | (5) I. L. R., 4 Calo., 89.         |
| R., Act X Rul., 74, <i>per</i> Peacock, C. J. | (6) 12 B. L. R., 290; S. C., 17 W. |
| (3) 12 B. L. R., 289; S. C., 21 W.            | R., 408.                           |
| R., 46.                                       | (7) 24 W. R., 287.                 |
|   | (8) I. L. R., 4 Calo., 556.        |

That a sale of a share in a tenure, which has been let to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an apportionment of the rent; but that, if the purchaser of the share desires to have such a severance or apportionment, he is entitled to enforce it by taking proper steps for that purpose.

If he takes no such steps, then the tenant is justified in paying the entire rent, as before, to all the parties jointly entitled to it. But if the purchaser desires to effect a severance of the tenure and an apportionment of the rent, he must give the tenant due notice to that effect, and then, if an amicable apportionment of the rent cannot be made by arrangement between all the parties concerned, the purchaser may bring a suit against the tenant for the purpose of having the rent apportioned, making all the other co-sharers parties to the suit.

No real injustice will be done to the tenant under such circumstances, because the possibility of the severance of the tenure by butwara, sale, or otherwise, is only one of those necessary incidents of the property which every tenant is, or must be presumed to have been, aware of when he took his lease; and as regards the costs of any suit which may be brought for the purpose of having the rent apportioned, they would of course be a matter for the discretion of the Court, and would probably depend upon how far in each case the tenant has had a fair opportunity of amicably adjusting the apportionment.

An instance of a suit of this nature will be found in the case of *Sreenath Chunder Chowdhry v. Mohesh Chunder Bundopadhya* (1), decided by Jackson and Cunningham, JJ., where seven mouzas had been let in patni to certain tenants by the zemindar, and then, under a decree against the zemindar, three of those mouzas were sold to *A*, and the other four to *B*. *A* then brought a suit against the patnidars to have his share of the patni rent apportioned, making *B*, purchaser of the other mouzas, a party to the suit; and it was held that the suit was properly brought.

It appears to us that this case was rightly decided, and that it is impossible upon principle to distinguish cases where a tenure

(1) 1 O. L. R., 453.

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is sold privately from those where it is sold by public auction; or, on the other hand, to distinguish cases where a tenure is severed by different portions of its area being sold to different persons, from those where it is sold to different persons in undivided shares.

In all cases of this kind, the entirety of the joint interest should be considered as severable at the option of the purchaser; and it would lead to most inconvenient results, and to the depreciation of property thus sold in different lots, if the purchasers of such lots were compelled to collect their rents in one entire sum, conjointly with one another, or with the owners of the unsold shares or portions.

In this particular case, as the plaintiffs did not take any proper steps to make arrangements with the tenant, or to obtain an apportionment of the rent, the learned Judge of this Court was right in dismissing the suit; and this appeal must, consequently, be dismissed with costs, including those of the hearing before the Full Bench.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice White and Mr. Justice Maclean.*

HOSSEIN ALLY (DEFENDANT) v. DONZELLE (PLAINTIFF).\*

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 March 15.

*Limitation—Beng. Act VIII of 1869, s. 52—Stay of Execution—Payment into Court—Extension of Time when Court is closed—Decree—Suit for Arrears of Rent.*

When a tenant has been sued for arrears of rent and a decree obtained against him under Beng. Act VIII of 1869, s. 52, which provides for the stay of execution if the amount of the arrears, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, and the Court is closed on or before the last day of the period so limited, the

\* Appeal from Order, Nos. 207, 208, 209, 210, and 211 of 1879, against the order of J. M. Lewis, Esq., Judge of Bhagalpore, dated the 13th August 1879; affirming the order of Baboo Ramdhar Mookerjee Roy Bahadur, Munsif of Muddepoora, dated the 5th April 1879.