

## APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

1879  
Dec. 12.

BHARRUT CHUNDER ROY (PLAINTIFF) v. KALLY DAS DEY  
AND OTHERS (DEFENDANTS).\*

*Co-Sharers of Land—Arrangement for separate payment of Rent—Suit for Arrears of Rent at Enhanced Rates—Beng. Act VIII of 1869, s. 29.*

One co-sharer cannot (even if he make his co-sharers parties to his suit) sue for the enhancement of his share of the rent, such an enhancement being inconsistent with the continuance of the lease of the entire tenure.

THIS was a suit for arrears of rent at enhanced rates. The plaintiff stated that the plaintiff was a co-sharer of certain property; that, in accordance, however, with an arrangement arrived at between himself and his co-sharers, he had been hitherto in the habit of receiving the rents of a certain definite portion of these lands, which were paid separately to him; that, for reasons in the plaint stated, he was entitled to recover arrears of rent at enhanced rates from the tenants of these lands, and had, therefore, instituted the present suit against such tenants, having also made his co-sharers defendants in the case. On the part of the defendants it was contended, *inter alia*, that the plaintiff, being the owner of an eight-anna share of a joint undivided taluq, could not, in such capacity, sue for the enhancement of a fractional share of the rents due under the lease; that such suit could only lie when all the co-sharers were plaintiffs and when the enhancement sought for was in respect of the whole of the rents comprised in the tenancy.

The Court of first instance overruled this objection, on the ground that, inasmuch as the plaintiff's co-sharers had been made co-defendants in the suit, and it had been proved that the plaintiff had been in the habit of realizing separate rents, he had, therefore on the authority of *Guni Mahomed v. Moran* (1),

\* Appeal from Appellate Decree, No. 331 of 1879, against the decree of Baboo Kedaressur Roy, Roy Babadur, Subordinate Judge of Jessore, dated the 19th November 1878, reversing the decree of Baboo Monmotho Nath Chatterjee, Munsif of Bagerhaut, dated the 21st February 1878.

(1) I. L. R., 4 Calc., 96; S. C., 2 O. L. R., 370.

a right to sue for enhancement of rent. On the facts, the Court found in favour of the plaintiff and granted a decree.

The lower Appellate Court being of opinion that the case quoted by the lower Court was an authority against the contention, that a shareholder is entitled to sue for the enhancement of a fractional share of the whole rent, reversed the decision of the Court of first instance.

The plaintiff appealed to the High Court.

Baboo *Lalit Chunder Bose* for the appellant.

Baboo *Doorga Mohun Das* and *Kalichurn Banerjee* for the respondents.

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

JACKSON, J.—The present suit was brought by the plaintiff, who is a co-sharer in a certain khas chuck in the Sunderbuns, against the defendants Nos. 1 to 7 as principal defendants and under-tenants, and against the defendants Nos. 8, 9, and 10, who appear to have been co-sharers in the chuck, for the purpose of obtaining from the principal defendants arrears of rent at an enhanced rate agreeably to notice. It is alleged, and for the purposes of this appeal we may assume it to be correct, that the plaintiff had previously been accustomed to recover rent separately from his co-sharers.

The defendants raised various pleas; the first of them was, that the suit was improperly framed, as being a suit to enhance the rent of a moiety of the defendants' tenure. That question was embodied in the second of the four issues framed in the Court of first instance, "whether the plaintiff, being one of several proprietors, can bring a suit for enhancement of rent."

The Munsif's decision upon the point was in these words: "The objection of the defendant has no weight, inasmuch as the plaintiff's co-sharers have been made co-defendants, and it has been proved that the plaintiff has been in the habit of realizing separate rents. According to the Full Bench ruling in the case of *Doorga Prosud Mytee v. Joynarain Hazrah* (1), the plaintiff,

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who is one of several proprietors, having made separate collections of rent, can sue for enhancement of rent." In that way the Munsif very shortly states what he considers to be the effect of the Full Bench ruling, and then he passes on to another part of the case. The result was, that he gave the plaintiff a decree for rent at rupees 261, with costs.

The defendants appealed, and the appeal coming before the Subordinate Judge, he says thus: "This appeal and appeal No. 53 being of the same nature have been tried together. According to the Full Bench Ruling of the Hon'ble High Court as noted in the margin [*Doorga Prosad Mytee v. Joynarain Hazrah* and *Guni Mahomed v. Moran* (1)], the plaintiff is not entitled to sue to enhance the rent in respect of eight annas share out of the whole sixteen annas of a taluq. According to the purport of those precedents the plaintiff's claim being deemed fit to be dismissed, it is ordered that the appeals be decreed, &c."

Now it must be admitted that this was not a satisfactory judgment, because the Munsif having apparently had the very same decisions before him, and having held upon those rulings that the plaintiff was entitled to succeed, the Appellate Court ought certainly to have pointed out where the Munsif's error lay, and ought to have shown how it held that the plaintiff's suit must fail. It happens, however, that the lower Appellate Court is right in fact, but in consequence of its omission, it becomes necessary for us to point out how the plaintiff's suit must fail. The cases before the Full Bench were referred with two specific questions: firstly, "whether the izaradar of a co-sharer of an undivided estate, who has made separate collections from the tenants of the whole estate in respect of his share, can sue to obtain a kabuliati at an enhanced rent for his share of the tenure, the other co-sharers not being made parties to the suit." Secondly, "whether the izaradar of a co-sharer of an entire tenure, who has for some time realized his rent separately in respect of his share, can sue to enhance the rent of that share, separately, without joining the other co-sharers of the tenure." No doubt, in these two questions it was assumed that the other co-sharers had

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not been made parties to the suit, and as the judgment of the Full Bench commences with the statement "we think that both questions referred to us should be answered in the negative," it may be, that the Munsif considered that the plaintiff, as he had been in the habit of realizing separate rent, and as he had made his co-sharers parties to the suit, might recover. But if he had read the judgment carefully, he would have found that the learned Judges of the Full Bench went beyond the questions referred to them, and laid it down distinctly that such a suit as the present could not be brought. "The right of one co-sharer," they observe, "to enhance the rent of his share separately, must be governed by the same principles as his right to a kabuliat. The Rent Law, in our opinion, does not contemplate the enhancement of a part of an entire rent; and the enhancement of a separate share is inconsistent with the continuance of the lease of the entire tenure." Now there is no allegation, as I understand, in this case, that the lease of the entire tenure under which the defendants held had come to an end, so that that state of things had not been brought about in which the under-tenants and the separate co-sharers were at liberty to enter into divers separate contracts. As far as we can see in this case the tenure as originally created still subsists. The only modification of it is, that, by the course of dealings between the parties, the plaintiff has been accustomed to recover his share of the rent separately. Therefore, if there was any wish on the part of the plaintiff, or any other party to this contract, to vary its terms, that could have been done by bringing the whole of the parties before the Court, and bringing the contract as a whole before the Court. The plaintiff is not at liberty to bring a suit merely to enhance his share of the rent. We think, therefore, that the Full Bench Ruling does apply to the facts and circumstances of this case, and that the appeal must be dismissed with costs.

This judgment will govern appeal No. 330 of 1879.

*Appeal dismissed.*

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