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has remained unchanged during the last twenty years; because the enhancement of the rent of the two-annas share has of course also enhanced the rent payable for the whole taluq.

We think, therefore, that the judgment of the lower Court is wrong in this respect, and that the defendants are not entitled to avail themselves of s. 16 or 17 of the Rent Law.

But then we have had some doubt whether, under the circumstances of this case, the rule laid down by the Full Bench of this Court in the case of *Durga Pershad Myti* v. *Joy Narain Hazra* (1) would not debar the plaintiff from obtaining the enhancement which she claims. If it did operate as a bar, of course there would be no use in sending the case back to the lower Court. But we think that the rule laid down in that case is not applicable to this. There the arrangement for payment of the rent to the several shareholders did not put an end to, or affect, the original lease of the entire tenure. Here, on the other hand, the butwara proceedings did effect such a complete change in the nature of the original tenure, as to create three new tenancies in the place of the old one.

The judgment of the lower Court will therefore be reversed; and the case will be remanded to that Court, in order that the question of enhancement may be tried upon its merits.

The appellant will have her costs in this Court.

PRINSEP, J.—I entirely agree in this judgment. I would only add that, though I am bound by the terms of the judgment of the Full Bench referred to, I do not altogether concur in the view taken.

Case remanded.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Prinsep.

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DILBASSEE KOONWAREE MOTHEE AND ANOTHER (DEFENDANTS) *v.* GUNGA PERSHAD AND ANOTHER (PLAINTIFFS).*

Claim under s. 280 of Act VIII of 1859—Suit—Possession—Title.

When a person making a claim to certain property under s. 280 of Act VIII of 1859 has been allowed to bring a suit under that section to try his

* Appeal from Original Decree, No. 269 of 1877, against the decree of Baboo Matadin Roy Bahadoor, Subordinate Judge of Gya, dated the 9th August 1877.

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

right to the property, it is sufficient, in the first instance, for him to prove his possession, without proof of title; but if he takes this course, it is open to the defendant to show that although possession may be in the plaintiff, yet he has no good title to the property, and that he (the defendant) has a better title.

Baboo *Taruck Nath Sen* and Moonshee *Mahomed Yusuf* for the appellants.

Mr. *C. Gregory*, Baboo *Madhub Chunder Ghose*, and Baboo *Kali Mohun Das* for the respondents.

THE facts of this case appear sufficiently from the judgment of the Court, which was delivered by

GARTH, C. J. (PRINSEP, J., concurring).—We think that this is a very clear case, and that the Court below was quite wrong in not trying the questions of title which the defendants wished to raise, and which in fact were raised by the issues.

The defendants had brought a previous suit against their father for the purpose of having the property in question partitioned, and they obtained a decree for that purpose. The present plaintiffs desired to intervene in that suit, with a view to showing that this property, which had been mortgaged to them by a zurpeshgi lease, was not subject to partition.

The Judge, however, would not allow them to intervene, and, therefore, as soon as the defendants had obtained their decree and were proceeding to deal with the property under the partition, the plaintiffs came in under s. 230 of Act VIII of 1859, and claimed to hold the property as against the defendants by virtue of their zurpeshgi deed. The lower Court allowed them to come in, and under that section registered their application as a suit between them and the present defendants, the decree-holders, and framed certain issues which raised the questions of title between them and the defendants.

The Court below, however, when the case came on for trial, considered that for the purposes of this suit, it was sufficient for the plaintiffs to prove that they were actually in possession, and having found this, the Subordinate Judge refused to allow the defendants, under the issues raised, to go into the question

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of title, and to show that, although the plaintiffs had possession under their zurpeshgi lease, the defendant's father had no right to grant them that lease.

We think that in this the Subordinate Judge was quite wrong, and that he has entirely misunderstood the meaning of the Full Bench case of *Radha Pyari Chowdhrain and others* v. *Nabin Chundra Chowdhry* (1).

It was there held that where a claim is made under s. 230 for property as against a decree-holder, and the party making that claim is allowed to bring a suit under that section to try his right, it is sufficient for him, in the first instance, if he pleases, to prove his possession, and that he need not go into his proof of title, even though he has one. The proof of possession would be *primâ facie* evidence of title.

But if he takes this course, and proves only his possession, then the Full Bench case clearly decides that the defendant would have a right to show; that although possession may be in the plaintiff, he has no good title to the property; and that he (the defendant) has a better title which would defeat the plaintiff's claim.

That very point has occurred in the present case. The plaintiffs have chosen to rely on their possession only under the zurpeshgi, but the defendants contend that they are entitled, notwithstanding the plaintiffs' possession, to have the partition carried out upon the ground that the zurpeshgi is not binding as against their shares.

The issues are calculated to raise that question, and the Subordinate Judge was quite wrong in not trying them.

The case must, therefore, go back to the lower Court under s. 354 of Act VIII of 1859, and the Subordinate Judge will try the issues, and return his finding to this Court.

Costs will abide the result.

Case remanded

(1) 5 B. L. R., 708.