ceedings; and we find, moreover, that this decision of the Bombay High Court has been followed by other Division Benches of this Court.

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PALUCKDHARY ROY v. RADHA PURSHAUD SINGH.

The appeal will be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Birch and Mr. Justice Mitter.

GUNNES CHUNDER HAZRA (DEFENDANT) *v.* RAMPRIA DEBEA (PLAINTIFF).*

1879 *March* 18.

Enhancement, Notice of—Grounds of Notice of Enhancement—Beng. Act VIII of 1869, *s.* 18, *cl.* 2—*Declaratory Decree in Suit for Enhancement.*

When the lands, the rent of which is sought to be enhanced, consist of more than one plot, it is not sufficient for the landlord to serve the tenant with a notice of enhancement, specifying all the three grounds of enhancement mentioned in s. 18 of Beng. Act VIII of 1869. Such notice should specify the particular ground or grounds on which each separate plot is alleged to be liable to enhancement.

Semble.—This would not be so if the same ground or grounds applied to *every* plot, the rent of which is sought to be enhanced.

If, in a suit for enhancement, the plaintiff fails to prove that he has served the defendant with a proper notice, the Court is not bound to make a declaratory decree, but whether it shall do so or not lies entirely in its discretion.

Baboo *Sreenath Doss* and Baboo *Rashbehary Ghose* for the appellant.

Baboo *Annoda Prosad Mookerjee*, Baboo *Juggadanund Mookerjee*, and Baboo *Mohini Mohun Roy* for the respondent.

THE facts of this case are sufficiently disclosed by the judgment of the Court, which was delivered by

MITTER, J.—The defendant in this case is owner of some 800 bigas contained in 56 plots scattered over four villages

* Appeal from Appellate Decree, No. 679 of 1878, against the decree of L. R. Tottenham, Esq., Judge of Midnapore, dated the 30th January 1878, modifying the decree of Baboo Jodoo Nath Roy, the Subordinate Judge of that District, dated the 27th April 1876.

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within the plaintiff's patni taluks. The plaintiff, considering himself entitled to enhance the rent of the lands in the possession of the defendant, served him with a notice, and the first point we have to consider in this appeal is, whether the notice is such as the law requires.

The Courts below differ upon this point. The Subordinate Judge being of opinion that the notice is bad because it does not give any information to the ryot as to the ground of enhancement applicable to each of the plots in dispute.

The District Judge considers that the notice is sufficient, in that it gave the defendant the information to which he was entitled by law, *viz.*, that enhanced rent was claimed for the ensuing year, and that it was claimed on all the grounds mentioned in the law, and he goes on to say,—"I think the object of the law is sufficiently fulfilled (the object not being to throw technical difficulties in the way of a zemindar) by a notice which lets the ryots know in good time that enhanced rent is demanded, and on what general grounds."

We have referred to the notice, and we find that the heading of it is a mere abstract of s. 18 of the Rent Act. Below this is a schedule of the 56 plots of land held by the defendant in the four villages, and we cannot say that such a notice is sufficient, and such as the law contemplates. In the case of so large and scattered a holding as this is, it may give the zemindar some trouble to frame a proper notice, but the law protects the tenant to the extent of requiring the landlord to give the tenant such a notice as shall enable him to understand upon which of his holdings enhanced rent is demanded, and on what ground. The same grounds cannot be applicable to all the lands in all the four villages, and the tenant is entitled to know what case he has to meet.

The Judge cites, in support of his view that the notice is a good and sufficient notice, the case of *Shib Narain Ghose* v. *Aukhil Chunder Mookerjee* (1). But in that case it was held that the notice, so far as it was a notice to the tenant that the productive power of the land had increased, was bad, and that if a

(1) 22 W. R., 485.

proprietor sought to base enhancement on the increased productive powers of the land, there ought to be a special declaration in the notice of the particular cause of increase. It is there said:—"If for instance a ryot has a large holding comprising land of various descriptions, one part may be capable of being improved by improved facilities of irrigation, and another part by means of an opposite character, *viz.*, by improving the drainage, it cannot in such a case be held that a notice, merely in the words of the second clause of s. 18, sufficiently informs the ryot as to the zemindar's claim. We think a landlord is bound to inform his tenant by written notice of the specific grounds on which he claims to enhance, and that the mere words of the clause are not to be considered sufficient notice in all cases. On these grounds, we would hold that the notice in this case, so far as it is a notice under the second clause of s. 18, and based on the increased productive powers of the soil, is bad; but that so far as it is based on the other part of the clause, *viz.*, the increased value of the produce arising from a general rise in prices, it is a good notice, and in that case reference is made to the judgment of the late Chief Justice in the case of *Banee Madhub Chowdhry* v. *Tara Prosunno Bose* (1), which supports the view we take of this case.

We have next to consider whether this is a case in which a declaratory decree ought to be given. To withhold or grant such decrees is entirely in the discretion of the Courts, and it seems to us that this is a case in which it is not desirable that a declaratory decree should be given. There has not, we think, been a sufficiently searching enquiry in this case as to the origin and duration of the tenancy. We agree with the lower Courts in holding that no reliance can be placed upon the potta which the defendant has produced. But it does not follow that the failure on the part of the defendant to prove the potta he has set up justifies a decree being passed against him. It is urged here (and though we cannot entertain the objection in special appeal, it ought to be a subject of inquiry in a case such as this) that for the proper decision of the case, it was

(1) 21 W. R., 33.

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necessary to find whether the defendant was not protected from enhancement by reason of the tenure having been held at an uniform rate since the permanent settlement.

The notice is bad, and all the points which arise in the case have not been tried. This being so, we think that a declaratory decree ought not to be passed in this case. The suit must, therefore, be dismissed with costs in all the Courts.

Appeal allowed.

Before Mr. Justice Mitter and Mr. Justice Tottenham.

1879 *April* 25.

TEKAIT CHOORAMUN SINGH (PLAINTIFF) v. DUNRAJ ROY (DEFENDANT).*

Enhancement of Rent—Grounds of exemption—Increase in value from natural causes.

In a suit for enhancement of rent, bare proof that the productive powers of the land in suit have been increased by the agency, or at the expense of the defendant or his ancestor, is not sufficient to exempt the defendant altogether from enhancement. In such a case, where the value of similar lands in the same locality, but not sharing the especial advantages resulting from works or improvements erected or effected, by or at the expense of the defendant or his ancestor, has been increased by natural causes, it must be assumed that the lands of the defendant owe their increased value to that extent to natural causes, and are to that extent liable to enhancement.

THE plaintiff in this case sued to recover from the defendant arrears of rent and road-cess under the following circumstances:—Previous to 1284 (1877) the defendant had for a long time been a tenant with rights of occupancy under the plaintiff paying rent fixed at Rs. 3 per biga. The productive powers of the land having increased, the plaintiff served the defendant with a notice under s. 13 of Act X. of 1859, that from that time he must either pay rent at the rate of Rs. 5 a biga, or give up possession of the land. The defendant retained possession of the land, and, at the conclusion of the year refused to pay rent at the enhanced rate.

* *Appeal from Appellate Decree, No.* 1428 *of* 1878, against the decree of R. Towers, Esq., Judicial Commissioner of Chota Nagpore, dated the 11th of May 1878, reversing the decree of C. A. S. Bedford, Esq., Assistant Commissioner of Pachamba in that district, dated the 29th of September 1877.