

*Before Mr. Justice Mitter and Mr. Justice Maclean.*

GOPAL AND ANOTHER (DEFENDANTS) v. MACNAGHTEN (PLAINTIFF).\*

1881  
April 28.

*Enhancement of Rent—Parties to Suit—Enhancement by single Shareholder.*

Even if a single shareholder can raise the rent of a joint tenant without the consent of his coparcener, he can only do so in a suit to which all the sixteen annas proprietors must be made parties.

In this suit the plaintiff, as ticcadar of an eight-annas share of Mouza Mohenpoor Ruttonpoor, sought to recover arrears of rent at an enhanced rate on a notice served by him alone. The proprietor of the other eight annas share was not a party to the suit.

The notice specified the different kinds of land in the holding of the defendants, and demanded different rates according to their respective qualities. It informed the defendants that the rent of the whole holding would be raised from the succeeding year.

In the plaint the plaintiff claimed his share only of the enhanced rent. Two grounds of enhancement were stated in the notice as well as in the plaint,—*viz.* (i), that the plaintiff having constructed embankments in the mouza, the productive power of the land had increased otherwise than through the agency of the tenant, and (ii), that the rates prevailing in the neighbouring mouzas were higher than those current in the village in question.

The Munsif at first dismissed the suit, upon the ground that a fractional shareholder of a property cannot alone enhance the rent of a joint tenant. But the District Judge, on appeal, overruled the decision, and remanded the case to be tried on the merits.

The Munsif, on remand, held, that the grounds of enhancement in the plaint and the notice were not made out. But,

Appeal from Appellate Decree, Nos. 2664 to 2763, 2861 to 2870, and 2880 to 2885 of 1879, against the decree of R. J. Richardson, Esq., Judge of Tirhoot, dated the 28th April 1879, affirming the decree of Baboo Ramyeed Lall, Munsif of Tezpoore, dated the 29th May 1878.

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after holding a local investigation, he came to the conclusion that the lands of the mouza in question were of the same quality, and that the average rate of rent paid by the bulk of the ryots was 3 rupees 4 annas per bigha; and as the defendants' rent was lower, he awarded a decree at that enhanced rate. The District Judge, on appeal by the defendants, upheld this decision.

The defendants appealed to the High Court.

Mr. *H. E. Mendies* and Baboo *Gopal Palit* for the appellants.

*The Advocate-General* (the Hon. *G. C. Paul*) and Baboo *Amarendro Nath Chatterjee* for the respondent.

The judgment of the Court (MITTER and MACLEAN, JJ.) was delivered by

MITTER, J. (who, after stating the facts of the case as above, continued) :—The first question that has been argued before us is, whether an undivided fractional shareholder of a mouza can enhance the rent of a holding of a joint tenant. But whether he can or not, we are clearly of opinion that such a suit as this is not maintainable in the absence of the other shareholder or shareholders. Conceding that a single shareholder can raise the rent of a joint tenant without the consent of his coparceners, it is clear that he can only do so in a suit to which all the sixteen annas proprietors must be made parties, otherwise the rent of the same holding might be raised to two or more different amounts at the instance of the several coparceners.

We are, therefore, of opinion that the decree of the lower Courts is not sustainable, and we dismiss the suit with costs in all the Courts.

This decision will govern Appeals Nos. 2665 to 2763, 2861 to 2870, and 2880 to 2885 of 1879, in which the plaintiff's suit is likewise dismissed with costs.

*Appeal allowed.*