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against Lawless is as manager, and, as such, liable for sums which came to his hands. The liability was not joint, they are based on distinct contracts, one by Shoshee Coomar Gangooly as banian, and the other by Lawless as manager. The liability is distinct. The fact is, that money came to Shoshee Coomar Gangooly as banian, and the same money came to Lawless as manager. There is no ground for saying that the recovery of a decree in the former suit is a bar to the present suit, or to the Company's right of set-off. There will have to be an account taken of the moneys which came to Lawless's hands, and the hearing of the two suits will be reserved till after the account has been taken.

Attorneys for the Company: Messrs. *Roberts, Morgan, & Co.*

Attorney for Lawless: Mr. *Chick.*

FULL BENCH.

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

CHUNI SINGH AND OTHERS (PLAINTIFFS) *v.* HERA MAHTO AND OTHERS (DEFENDANTS).*

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June 17.

Arrears of Rent—Enhancement—Notices of Enhancement—Beng. Act VIII of 1869, *s.* 14.

Per GARTH, C. J., PONTIFEX and MITTER, JJ. (MORRIS and MCDONELL, JJ., dissenting).—A suit for arrears of rent at an enhanced rate brought by all the shareholders will lie, notice under s. 14 of Beng. Act VIII of 1869 having been issued at the instance of some of the persons entitled to the rent.

THIS case was referred to a Full Bench by MITTER and MACLEAN, JJ., on the 4th May 1881, with the following opinion:—

MACLEAN, J.—The plaintiffs in this suit, who are the appellants before us, are the proprietors of Mouza Kazibigha, in

* Full Bench Reference in appeal from Appellate Decrees, Nos. 1820 to 1823 of 1879, made by Mr. Justice Mitter and Mr. Justice Maclean, dated the 4th May 1881.

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which the defendants cultivate 16 bighas 11 biswas 6 dhurs. The plaint alleges that this land was formerly held on a bhowli rent, then a cash rent was paid for it for some time, and now a bhowli rent has been reverted to. The claim is for a bhowli rent for 1285 F., and for a kabuliat for five years from 1286 F. The rent demanded is at the rate of nine-sixteenths of the produce, valued at Rs. 106-13-6, for the year 1285, and it is stated in the plaint that a notice was served on the defendants, under s. 14, Beng. Act VIII of 1869, calling on them to execute a kabuliat to pay nine-sixteenths of the produce as enhanced rent.

The defendants plead that the notice served upon them was not according to law, inasmuch as it was served on the application of some of the proprietors only,—*viz.*, 14 annas 15 cowri 18 bowri 1 phowri shareholders. They also plead that cash rent cannot be converted into produce rent, and that, by a decision dated 22nd December 1875, their rent was declared to be payable in cash. Exemption from enhancement is claimed.

In the first Court it was held, that the suit was bad so far as it referred to the claim for enhanced rent by these proprietors, who had not caused the notice of enhancement to be served. The other issues, save as to the quantity of lands in the defendants' occupancy, to be decided in favour of the plaintiffs.

The lower Appellate Court dismissed the suit, on the ground that all the proprietors had not joined in causing the notice of enhancement to be served, which was therefore defective.

The only question submitted for our consideration is, whether a suit by all the proprietors, based upon a notice of enhancement issued at the instance of some of them, will lie.

The Full Bench decision in *Guni Mahomed* v. *Moran* (1) has been held by the lower Appellate Court to be in point; but that case, when examined, is really no authority in the present case. There the suit was by the izardar of a share of a village or estate entitled to receive his share of the rent separately. The learned Judge of this Court, who decided the case in special appeal, held, that it was not necessary for the plaintiff to make the persons entitled to the remainder of the rent parties to the

(1) I. L. R., 4 Calc., 96.

suit. On appeal under the Letters Patent, the question referred to the Full Bench was, whether the plaintiff "could sue to enhance the rent of that share separately without joining the other co-sharers of the tenure," and the Full Bench answered that question in the negative.

That case, therefore, is authority for the proposition that a co-sharer cannot enhance his share of a tenant's rent, unless he makes the other persons entitled to the rest the real parties; and if it went no further than that, it would not be authority for the proposition that one co-sharer could not enhance his share if he did make other co-sharers parties. But there is another passage in the judgment which seems to meet this proposition.

Towards the close of their judgment, the learned Judges remarked:—"The Rent Law, in our opinion, does not contemplate the enhancement of a part of an entire rent; and the enhancement of the rent of a separate share is inconsistent with the continuance of the lease of the entire tenure." There is, however, direct authority—*Troylochhotaran Chowdhry* v. *Muthoora Mohun Dey* (1) and *Ram Lochun Dutt* v. *Petamber Paul* (2)—for a contrary view, which does not seem to have been discussed before the Full Bench. For my part I should be glad to have the question reconsidered.

Premising that the rent was originally payable in one sum to the co-sharers jointly, but that by arrangement between the co-sharers on the one hand and the tenant on the other, the latter has been in the habit of paying a portion of the rent to each co-sharer in respect of his particular share, we have abundant authority for the right of each co-sharer to realise his share by suit, subject to the rule that he must join his co-sharers either as plaintiffs or defendants; and it is difficult to see why he is to be confined to suing for rent, but prohibited from suing for rent at enhanced rates. Suppose the tenant agrees to pay enhanced rent to one co-sharer, but refuses to do so to the rest, the latter would surely be allowed to claim the same increase as their more fortunate partners. But they must proceed according to law, and serve a notice of

(1) W. R., 1864, Act X Rul., 41. (2) *Ibid*, 111.

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enhancement—*Salgram Opadhya* v. *Maharaja Moheshur Bux Sing* (1). It may be said that the tenant has agreed to vary the rent of his tenure in favor of one of his landlords, but why may not one of his landlords compel him to vary it? This raises the question of the interpretation of the words "person to whom the rent is payable" in s. 14, Beng. Act VIII of 1869. If these words mean "all the persons to whom the entire rent is payable," then the authority last quoted is bad law. The co-sharer to whom the tenant has agreed to pay enhanced rent could not be compelled to join in a notice, the other co-sharers would not be "all the persons to whom the rent is payable." I must say that on the premises I do not see why a co-sharer should not sue for enhanced rent of a share conditional on his causing a notice for enhancement of the entire rent to be served through the Collector.

The object of the notice is to give the tenant the opportunity of surrendering his land, if unwilling to agree to enhancement, and he can do that just as well on a notice by some of his landlords as on a notice by all of them. If he elects to contest the liability of his rent to enhancement, he can do so on better terms, if all his landlords are arrayed against him than if some of them are neutral. In fact, all that is necessary for the suit is, that notice shall have been served upon him, that he will, for the ensuing year, be liable to pay more rent than in the previous year. If on such a notice by one co-sharer, a suit will lie for a share of the enhanced rent, all co-sharers being parties, and separate payment being proved or admitted, *à fortiori*, a suit can be brought by all the co-sharers for the whole enhanced rent.

But this view is opposed to the views of the Judges in *Kashee Kishore Roy* v. *Alip Mundul* (2). Prinsep, J., expresses himself thus:—"One co-sharer would not be competent to issue a notice of enhancement of the rent of the entire tenure, nor could he, under the terms of the judgment of the Full Bench, issue notice of enhancement of the rent due on his own particular share," &c. The first of these propositions is opposed to the authority I have quoted, which the learned Judge himself would have followed if

(1) W. R., 1864, Act X Rul., 94. (2) I. L. R., 6 Calc., 149.

he had not felt bound by the Full Bench decision. Morris, J., remarks, that "the notice of enhancement prescribed by the Act is defective if it be not served on the application of all the co-sharers in the tenure." And again—"But inasmuch as the readjustment of the rent to which he agrees does disturb the terms on which the tenant holds the tenure equally from him and his co-sharer, it is necessary, before any such readjustment of rent can be made, that he, as well as his co-sharer, should sign the notice and apply to have it served upon the tenant."

It is however to be remarked, that that suit was a suit for enhanced rent of a share on a notice in which the plaintiff only claimed the rate due on his own share, calculated on what would be due on the entire tenure. It differs therefore somewhat from the suit under appeal, the notice in which referred to the rent of the entire tenure, and not to a portion of it.

Nevertheless, the principle upon which the judgment proceeds is applicable to suits for the entire rent, upon notice of enhancement of the entire rent, and in this principle I do not concur. I think it should therefore be referred to a Full Bench for decision:—(i) Whether a suit can be brought by a co-sharer in actual separate receipt of a share of the rent for enhanced rent of his share, notice having been served in respect of the whole rent, and all the co-sharers being made parties to the suit? and (ii) Whether a suit for arrears of rent at enhanced rate brought by all the shareholders will lie, notice under s. 14, Beng. Act VIII of 1869, having been issued at the instance of some of the persons entitled to the rent?

MITTER, J.—I agree to this order of reference to a Full Bench.

Baboo *Mohesh Chunder Chowdry* and Baboo *Chunder Madhub Ghose* for the appellants.

Baboo *Omarendronath Chatterjee* for the respondents.

The following judgments were delivered:—

GARTH, C. J. (PONTIFEX and MITTER, JJ., concurring).—I think that the point referred to us in the first question does not arise upon the appeal.

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Second.—The second question, in my opinion, should be answered in the affirmative. The practice hitherto, so far as we have been able to ascertain it, seems to have been to treat a notice to enhance as insufficient, unless it has been signed by or on behalf of all the co-sharers. I believe that this is the first occasion on which the question has been referred to a Full Bench; and I therefore consider myself at liberty to decide it according to what appears to me the reasonable construction of s. 14 of the Rent Law.

The right to enhance rent from time to time, as occasion arises, is, in my opinion, one of those incidents of a contract of tenancy which the landlords or any of them have, as much right to enforce, as a covenant to pay the road-cess, or to cultivate the land in any particular manner. It is true that all the co-sharers *ought* to join in bringing any suit of the kind. But suppose that some of them refuse to join as plaintiffs. Section 32 of the Civil Procedure Code provides, that no one shall be made a plaintiff in a suit against his will. In that case are those who desire to bring a suit to be deprived of their rights, because the others will not join as plaintiffs?

The reason of their refusing to join may be, that they are colluding with or influenced in some way by the tenant. Are these recusants to be allowed to deprive their co-sharers of the means of enforcing their just dues, or on the other hand to drive them to the expensive, tedious, and inconvenient alternative of a butwara? I think not. The simple and obvious remedy for such a state of things is to allow the co-sharers who wish to sue to do so, but making the recusant co-sharers defendants in the suit. The Court will thus have all the parties before it and the means of doing justice between them. If the claim made by the plaintiffs is unfounded, they will probably be made to pay the costs, not only of the tenants, but of their co-sharer defendants. If, on the other hand, their claim is a just one, and the conduct of the co-sharer defendants has been unreasonable, the latter would probably be made to pay the plaintiffs' costs. The Court would have no difficulty in fairly adjusting, in a suit so framed, the rights of all the parties.

Then is there any difference in point of principle between a suit brought to enhance the rent, and a suit brought to enforce any other right of the landlords? It appears to me, that the rule which applies to bringing a suit, is applicable also to giving the notice necessary to the suit. The notice is to be given by "the person in receipt of the rent," which is the phrase used generally in the Rent Law as signifying the landlord or landlords; and I think that those persons who are entitled to sue as landlords have also the right under this section to give the necessary previous notice. No mischief, as it seems to me, can follow from this construction; whereas the contrary construction might lead to great injustice.

I think therefore that the decision of the lower Appellate Court should be reversed, and that the case should be remanded to that Court to be tried upon its merits. The costs in this and in the lower Appellate Court will abide the result.

The same decree will be made in the analogous cases.

MORRIS, J.—In my opinion, both the questions which form the subject of this reference should be answered in the negative.

The real question, which underlies both the questions of the reference, appears to be, whether a notice of enhancement of rent, served by order of the Collector on the application of a proprietor or proprietors of a fractional share of the land held by the tenant cultivator, whose rent is sought to be enhanced, is a good notice under the Rent Law, provided that subsequently all the proprietors join in a suit brought to enforce payment of the rent at the rate specified in the notice. If the notice is a good one, then clearly a suit, brought by all the proprietors on the basis of such notice, would lie, though it by no means follows that a co-sharer in a joint undivided estate, who can bring a suit for his fractional share of the gross stipulated rent on the strength of what the Full Bench, in the case of *Guni Mahomed* v. *Moran* (1), describe as a private arrangement between himself, his co-sharers, and the tenant, is competent

(1) I. L. R., 4 Calc., 96.

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to bring a suit for rent at an enhanced rate in the proportion due upon his share when the payment of rent at such enhanced rate forms no part of that 'arrangement.' The notice necessarily conveys an intimation to the tenant that the terms on which he has hitherto paid the rent, and held his land, are to be altered; and that he must accept a potta, or, as I understand it, a new contract of lease, and give a counterpart kabuliat on the terms specified, or relinquish his tenure. But if this is so, and the tenant agrees to the terms proposed, can the part-owner, who has served the notice, act independently of his co-sharers, and grant a potta and take a kabuliat accordingly? Under the Full Bench decision just referred to, he is not competent to do so, because, to use the language of the Full Bench, the notice and the potta and kabuliat based upon it are "obviously inconsistent with the continued existence of the original lease of the tenure." This presents one strong objection to the validity of such a notice.

Then again the Rent Act, s. 14, requires that "the notice shall be served by order of the Collector on the application of the person to whom the rent is payable." When more persons than one are entitled to receive the rent, then "the person to whom the rent is payable" must signify all such persons. This is the natural meaning which these words convey, and this is, as it seems to me, the meaning which they are intended to convey wherever they are used throughout the Act. Take the case of a potta, which, under s. 2 "every ryot is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable." It need hardly be said that a potta, which purports to give in lease a certain property, would be an incomplete instrument if signed by a proprietor possessed of only a partial interest therein, and not authorized to sign on behalf of the other proprietors.

The right to measure is given (ss. 25 and 38) "to every proprietor of an estate or tenure or other person in receipt of the rents of an estate or tenure." Repeated decisions of this Court have held that this right cannot be exercised at the instance of a proprietor of a fractional share of a joint

undivided estate. The application to the Civil Court or to the Collector must be made by all the proprietors. See *Santiram Panja* v. *Bycunt Panja* (1), *Moolook Chand Mundul* v. *Modhoosoodun Bachusputty* (2), and *Shoorender Mohun Roy* v. *Bhuggobut Churn Gungopadhya* (3).

When a tenant has been illegally ejected, and under s. 27 seeks to recover the occupancy of his land "from the person entitled to receive rent for the same," he would, in the event of there being more persons than one entitled to receive the rent, necessarily frame his suit against all, and not against one only.

So a deposit received by a Court under s. 47 would not be paid to a shareholder as "the person in receipt of the rent of the land" of the tenant depositor, unless he showed his authority from the other sharers to receive the money.

Nor would a suit under s. 53, for ejectment of a cultivator not having a right of occupancy, lie on the part of a person in receipt of only a fractional share of the rent.

The law in the matter of distraint also supports this view. By s. 68 the power of distraint is limited to "the zemindar or other person entitled to receive the rent of the land immediately from the actual cultivator." But as a sharer in a joint estate of the class referred to in the preceding section (64) is entitled to receive his quota of the rent direct from the cultivator, an express proviso is made that he shall not exercise this power of distraint independently of his co-sharers.

It appears to me that the questions of this reference, bearing on the relation of landlord and tenant in the matter of enhancement of rent, cannot be determined by considerations arising out of any general or abstract rights of property; for it must be remembered that rights incidental to property in one country are not necessarily rights incidental to property in another country. We see that, throughout the Rent Act, the Legislature treat the various persons who compose the proprietary body in a joint undivided estate as one person. There is supposed to be a mal cutcheri or other common place "where rents are usually payable," at which receipts are to be given

(1) 10 B. L. R., 397. (2) 16 W. R., 126. (3) 18 W. R., 382.

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and moneys are to be tendered (see s. 46 and sched. A), whence, in fact, the administration of the joint estate proceeds, and whence consequently all notices of enhancement of rent should issue. This is only in accordance with the joint family system which prevails in the country, and gives to the kurta, or head of the family, the entire responsibility of management. In a joint undivided estate, the kurta of the family, or a joint manager, is sole administrator; and if by reason of family dissension, or the intrusion of a stranger, any shareholder desires to deal separately with his own share and manage independently, he can follow what is the recognized custom of the country, and obtain a partition of his share. This course is, no doubt, somewhat tedious and oftentimes expensive; but it is the course which both law and custom sanction, and which a purchaser of a share voluntarily accepts as one of the incidents of a joint undivided estate. Nor is it an argument that as one of several joint tenants has a right to contest his liability to pay the enhanced rent demanded of him, so a part-proprietor of a joint undivided estate has a corresponding right to enhance the rent. The answer to this is, that enhancement of rent, where it is not accepted without demur by the ryot, is a right which a proprietor can only exercise subject to the restrictions imposed by s. 14 of the Rent Act. That section, as it affects prejudicially the interest of the ryot, ought, in my opinion, to be construed strictly. The ryot has a right to say that he shall be assured in the uninterrupted possession and enjoyment of his holding at the rent hitherto paid by him, unless and until all the persons entitled to receive the rent from him combine to serve him with a notice specifying the grounds on which they claim higher rent, and are prepared to establish those grounds in a Court of Law. The succeeding section (15) enacts, that any under-tenant or ryot on whom such notice has been served, may contest his liability. Therefore, if several tenants who hold land jointly are served with the notice, the law expressly allows one or all of them (though it is hardly to be supposed that all would not join if there was good ground for so doing) to contest the enhancement. In this matter of enhancement

therefore joint proprietors and joint tenants are not placed upon an equal footing so far as their rights in the property are concerned under the law. If a ryot can be served with notice of enhancement of rent at the instance of a part-proprietor of the land held by him, it is immaterial for the purposes of this argument, how small may be the fractional share which such part-proprietor possesses. Any proprietor, however minute his interest may be, may set the law in motion and disturb pre-existing arrangements without the previous consent of his co-sharers. And if the first question be answered in the affirmative,—that is, if it be sufficient for a part-owner, after issue of a general notice, to make his co-sharers parties as defendants to an enhancement suit, then a tenant is always liable to be exposed to the caprices of individual shareholders, and perhaps to prolonged litigation, for I can see nothing to prevent year after year a fresh suit for enhancement being brought by each separate shareholder. The plaintiff in each suit would take care to remedy the defects in proof of his predecessor, and so the tenant would be forced eventually to succumb.

But apart from this possible abuse of separate notice on their own account by individual shareholders, I think it is not an unimportant fact, that, so far as my experience extends, and I am given to understand so far as the experience of my brother Civilian Judges of this Court extends, the custom of the country and of the Courts in the matter of notices of enhancement of rent is to issue them at the instance of *all* the proprietors, and not of a part proprietor only. This custom appears to me to be in conformity both with the letter and the spirit of the law as it now stands, and I think therefore that it should be maintained.

MCDONELL, J. — I am of opinion that both the questions should be answered in the negative. I concur in the view of the law taken by Mr. Justice Morris and the judgment just delivered by him.

Case remanded.