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under a second attachment was valid, and would prevail over a sale subsequently held under a prior attachment. Under these circumstances, therefore, we are of opinion that the plaintiffs are entitled to recover in this suit; but inasmuch as the Subordinate Judge reserved for trial in a regular suit the question of title between the plaintiffs and Golam Ali, and as there are circumstances connected with the plaintiffs' purchase, as for example, the very inadequate price paid by the plaintiffs on the sale to them, which render it desirable that the question should be left open, we reserve liberty to Golam Ali to institute any suit with respect to the title to this land that he may be advised to bring against the plaintiffs. The appeal will be allowed with costs, the judgment of the Munsif being restored. This judgment will apply to No. 2466.

*Appeal allowed.*

*Before Sir Richard Gurth, Kt., Chief Justice, and Mr. Justice McDonell.*

RADHA PROSHAD WASTI AND OTHERS (PLAINTIFFS) v. ESUF  
 AND OTHERS (DEPENDANTS).\*

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 April 28.

*Ejection—Co-sharers—Trespassers—Co-sharer's Right.*

Where a tenant has been put into possession of ijmal property with the consent of all the co-sharers, no one or more of the co-sharers can turn the tenant out without the consent of the others; but no person has a right to intrude upon ijmal property against the will of the co-sharers or any of them; if he does so, he may be ejected without notice, either altogether, if all the co-sharers join in the suit, or partially, if only some wish to eject him; and the legal means by which such a partial ejection is effected, is by giving the plaintiffs possession of their shares jointly with the intruder, as explained in the case of *Hulodhur Sen v. Gooroodoss Roy* (1).

THE plaintiffs purchased at an execution-sale, in 1869, a twelve-anna share in a certain taluq, formerly belonging to one

Appeal from Appellate Decrees, Nos. 2147, 2148, and 2149 of 1879, against the decree of F. McLaughlin, Esq., Officiating Judge of Noakhali, dated the 2nd June 1879, reversing the decree of Baboo K. D. Chatterjee, Second Munsif of Soodaram, dated the 7th September 1878.

(1) 20 W. R., 126.

Akramuddin. Pending execution-proceedings, one Reazuddin intervened, claiming the twelve-anna share as his own: this claim was rejected, as was also a suit brought to have his title declared to the property. The plaintiffs took possession of this property in 1871; and in 1872, they and their co-sharer in the whole sixteen annas were dispossessed by the Collector of Noakhali, whereupon they jointly brought a suit under Act XIV of 1859 against Government, and recovered possession. During the time the plaintiffs and their co-sharer were put out of possession, the Collector let into occupation, of four kanis of land within the taluq, certain persons, Esuf and Gar Banu (the defendants Nos. 1 and 2). The plaintiffs, thereupon, served on these persons notices to quit; but on their refusing to do so, they brought this suit against the defendants Nos. 1 and 2 (making their co-sharer a *pro forma* defendant) to obtain khas possession of the four kanis of land to the extent of their twelve-anna share, claiming mesue profits for the time the defendants were so in possession.

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The defendants Nos. 1 and 2 contended, that they were in possession of the land in question before the Collector took possession of the taluq, and that they held the land under howladars; and the *pro forma* defendant (the co-sharer of the plaintiff) supported their contention.

The Munsif decided in favor of the plaintiffs, and gave them ijmal khas possession of their twelve-anna share, and ordered the defendants Nos. 1 and 2 to pay mesue profits and costs.

These defendants appealed to the District Judge, who, without going into the merits of the case, decided that the plaintiffs, being sharers only in the property, could not bring this suit without joining their co-sharer, and that, inasmuch as this co-sharer was adverse to the suit, the plaintiffs' remedy was either to obtain a partition, or induce their co-sharer to join in the suit; he therefore allowed the appeal.

The plaintiffs appealed to the High Court.

Baboo *Doorga Mohun Das* for the appellants.

Baboo *Sreenath Bonnerjee* for the respondents.

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The judgment of the Court (GARTH, C.J., and McDONELL, J.) was delivered by

GARTH, C. J.—In this case the District Judge has, unfortunately, made a mistake. According to the view which he has taken of the law, the plaintiffs, however just their claim may be, cannot possibly obtain redress except by a partition.

Their case is, that they are the twelve annas shareholders of a certain shikmi taluq, the remaining four annas share belonging to the defendant No. 4. They say that the Collector of Noakhali unjustly dispossessed them of this taluq; whereupon they and the defendant No. 4 brought a suit against him under s. 15, Act XIV of 1859, and obtained a decree for possession.

Meanwhile, the principal defendants, Nos. 1 and 2, had been let into occupation through the Collector, of four kanis of land within the taluq; and as the Collector himself was a trespasser, the plaintiffs say that these defendants are also trespassers. They, therefore, bring this suit to obtain khas possession of the four kanis of land to the extent of their twelve annas share jointly with the defendants, and also mesne profits for the time during which the latter have held the twelve annas share unlawfully.

The case of the principal defendants is, that they were rightfully occupying the land as tenants before the Collector took possession of the taluq; and the defendant No. 4 supports their case, and desires to retain them upon the property.

The Munsif found entirely in favor of the plaintiffs, and gave them a decree for ijmali possession of the land to the extent of their twelve annas share, with mesne profits and costs.

The District Judge has taken a different view. He has dismissed the suit, upon the ground that, even if the plaintiffs' case be well founded as to the principal defendants having been let into possession by the Collector, they cannot bring a suit of this kind without joining their co-sharer as a plaintiff; which means, of course, that they cannot sue at all, because their co-sharer, the defendant No. 4, is adverse to the suit.

If the Judge were right in this, one shareholder out of many might always set his co-sharers at defiance, by introducing

objectionable persons upon the joint property against the wishes of his co-sharers; and the latter would have no remedy, except by obtaining a partition.

We know of no authority which justifies such a view of the law; and it seems to us, that the District Judge has quite misunderstood the meaning of the cases to which he refers.

The plaintiffs' case is, that the principal defendants are trespassers, because they were introduced upon the land by the Collector, who was himself a trespasser; and if the plaintiffs are right in this, and if they have not since recognized the defendants as their tenants, it is clear, that as against the plaintiffs they are trespassers; and no consent to their occupation by the other defendant, No. 4, will make them any other than trespassers as regards the plaintiffs' twelve annas share.

If the defendant No. 4 has given the other defendants permission to occupy the land to the extent of her share, the decree to which the plaintiffs are entitled, assuming that they prove their case, is that which they ask for in the plaint, and which the Munsif has given them,—that is to say, a decree for khas possession of the four kanis jointly with the defendants to the extent of their twelve annas share.

A similar decree was made in favor of the plaintiffs by the High Court in the case to which the Judge refers: *Hulodhur Sen v. Gooroodoss Roy* (1). The other case which he cites, *Balaji Baihaji Pinge v. Gopal bin Raghu Kuli* (2), relates to a tenant, not a trespasser.

The view which the Munsif has taken of the law appears to us perfectly correct.

When a tenant has been put into possession of ijmal property with the consent of all the sharers, or what is the same thing, has been placed there by the managing shareholder, who has authority to act for the rest, no one or more of the co-sharers can turn the tenant out without the consent of the others. But no man has a right to intrude upon ijmal property against the will of the co-sharers or of any of them. If he does so, he may be ejected without notice, either altogether, if all the co-sharers join in the suit, or partially, if only some of

(1) 20 W. R., 126.

(2) I. L. R., 3 Bomb., 23.

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the co-sharers wish to eject him ; and the legal means by which such a partial ejection is effected, is by giving the plaintiffs possession of their shares jointly with the intruder, as explained in the case of *Hulodhur Sen v. Gooroodoss Roy* (1), per Jackson, J.

The judgment of the lower Appellate Court must, therefore, be set aside ; and the case must go back to that Court for retrial in accordance with the view of the law which we have above explained.

The appellants will have their costs in this Court ; and the costs in the lower Court will abide the result.

Appeals Nos. 2148 and 2149 will be governed by this decision.

*Case remanded.*

*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.*

1881  
 May 30.

LOKESSUR KOER (PLAINTIFF) v. PURGUN ROY AND OTHERS  
 (DEFENDANTS).\*

*Suit for Possession—Formal Possession—Transfer of Possession—Civil Procedure Code (Act VIII of 1859), ss. 223, 224.*

In a suit for possession, it appeared that, in 1863, the plaintiff had sued some of the present defendants for khas possession of the same land. In that suit the defendants pleaded that they were tenants of the plaintiff and entitled to hold under a patta, which they failed to prove, and the plaintiff obtained a decree. Three years afterwards the plaintiff was put in formal possession by the Court under s. 224 of Act VIII of 1859, instead of under s. 223.

*Held*, that as the plaintiff was put in possession under his decree by the officer of the Court, the form in which execution was given was immaterial.

The formal possession given by a Civil Court under an execution operates in point of law and fact, as between the parties, as a complete transfer of possession from the one party to the other.

THE plaintiff in this case sued to recover from the defendants possession of seventeen bighas of land. The plaintiff

\* Appeal from Appellate Decrees, Nos. 1766 and 1767 of 1879, against the decree of Baboo Kally Prosonno Mookerjee, Additional Subordinate Judge of Sarun, dated the 25th April 1879, reversing the decree of Baboo Sarut Chunder Mookerjee, Munsif of Chumparun, dated the 17th November 1877.