

his turn for examination came round. In consequence of this procedure, the principal prisoner, Chandra Nath Sirkar, was examined in the absence of the other prisoners, who never had an opportunity of denying or even knowing what he had said, and yet that statement, made behind their backs, is made the chief ground for convicting them. It is an elementary rule that no one should be condemned in his absence, and yet the Sessions Judge has acted in a manner directly opposed to it. We, therefore, are obliged to place entirely out of consideration any statement made by any of the accused in the absence of another prisoner so far as it affects the latter. (His Lordship then proceeded to consider the evidence and dismissed the appeals.)

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Morris and Mr. Justice Tottenham.

BABA CHOWDHRY AND OTHERS (PLAINTIFFS) v. ABEDOODDEEN MAHOMED AND OTHERS (DEFENDANTS).*

1881
Feb. 17.

Suit for Arrears of Rent—Beng. Act VI of 1862, s. 10—Irregular Proceedings of Collector under—Shareholder—Proprietor.

An applicant under s. 10 of Beng. Act VI of 1862 must be the proprietor of the estate, and not merely a shareholder in the proprietary body.

Mahomed Bahadur Mojoondar v. Rajah Raj Kishen Singh (1), Moolook Chand Mundul v. Modhoosoodun Baohusputty (2), Shoorender Mohun Roy v. Bhuggobut Churn Gungopadhya (3) followed.

Under the above section, the Collector is not entitled to assess the rents at what he considers to be fair and reasonable rates from the rents prevailing in the neighbouring properties, but is only authorised to ascertain for the landlord what the existing condition of his estate is, what are the measurements, what the names of his tenants, and what the rents they are paying.

Anunt Manjhes v. Joy Chunder Chowdhry (4) followed.

In a suit for rent by one co-sharer, the plaintiff claimed that the rent should be calculated at the rate fixed by the Collector, in a proceeding held

* Appeal from Appellate Decrees, Nos. 1189 to 1211 of 1879, against the decree of Baboo Bhugwan Chunder Chuckerbutty, Subordinate Judge of Rungpore, dated the 19th March 1879, reversing the decree of Baboo Blubun Mohun Ghose, Munsif of Bhatnari, dated the 26th August 1878.

(1) 15 W. R., 522.

(3) 18 W. R., 382.

(2) 16 W. R., 126.

(4) 12 W. R., 371.

1881
 BABA
 CHOWDHRY
 v.
 ABEDOOD-
 DEEN
 MAHOMED.

by him under s. 10 of Beng. Act VI of 1862. It appeared that the defendants had not had notice of the proceeding, and that the Collector had ascertained the rate from the rents paid in the neighbouring properties.

Held, that the proceedings of the Collector were irregular, as he had acted without jurisdiction, and that they were not binding on the defendants for the purpose of showing the rate at which rent was payable by them.

IN all these cases, which were analogous and tried together by the consent of all parties, the plaintiff sued the defendants for arrears of rent for the years 1281, 1282, 1283, and part of 1284, corresponding with the years 1874 to 1878, at a rate fixed by the Collector in a proceeding held by him under s. 10 of Beng. Act VI of 1862. The defendants contended that the rates claimed were in excess of those actually due, and that they were exorbitant; and further, that they were not bound by the proceedings of the Collector, as neither they, nor their predecessors, had been parties thereto, and that such proceedings were irregular and illegal.

It appeared that the plaintiff had become the purchaser of a two-annas eight-gandas share in the mouza in which the defendants held their jamas, and he alleged that, having failed to realize any rents through the ryots having combined against him at the instigation of his other co-sharers, and refused all information, he was forced to apply to the Collector under s. 10 of Beng. Act VI of 1862. The Collector thereupon deputed an Amin to ascertain the tenures and the rents payable in respect thereof, and it was upwards of three years before this enquiry could be completed. During his proceedings, the Amin, being unable to proceed in the ordinary way, applied to the Collector, and under his instructions proceeded to ascertain the rents payable in the disputed mouza from those paid in the adjoining village, and having duly prepared the necessary papers, submitted them to the Collector, along with the jamabandi terij, on the 27th June 1870. The Collector, subsequently on the 29th June 1870, confirmed the report and directed a decree to issue in accordance therewith.

It appeared also during the hearing of these cases that the same jamabandi terij had been filed in certain other suits in which the present defendants were not parties, which had been

instituted by the plaintiff against other ryots, and in which he had obtained decrees; but it seemed that there was ample evidence on the record in those suits, apart from the jamabandi terij, to prove that the rents which he then claimed were calculated at the rates actually payable to him, whereas in the present cases no such evidence had been given, but, on the contrary, it was shown from the jama-waseel-bakee papers of the other thirteen annas nine and a quarter gaudas proprietor in the estate, that the defendants were in possession of these respective tenures at and after the several rents admitted by them to be justly due, which were calculated at a rate far less than that now claimed by the plaintiff. From the evidence of the plaintiff's own witnesses it was further shown, that he had been in receipt of rent from the defendants since 1272, corresponding with the years 1864-65, which was previous to the application being made to the Collector to have the measurement taken and the rent ascertained; and that, after he had become a shareholder by purchase in the mehal, he had instituted a suit for mesne profits which had accrued due to him from the persons who had withheld possession since the date on which he had acquired the right by purchase; and consequently it was urged by the defendants that there had been no necessity for the proceedings held by the Collector.

The defendants admitted rent to be due by them, but at a considerably lower rate than that claimed; and pleaded tender of that amount, but failed to prove any such tender.

The Munsif accordingly, after having heard the evidence on both sides, gave the plaintiff a decree with costs for the full amount claimed by him, calculating the same at the rate fixed by the Collector in the above proceeding and set out in the jamabandi terij; but on appeal this decree was varied by the Subordinate Judge, who held that the Collector's proceedings were not binding on the defendants, and gave the plaintiff a decree for the rent claimed, calculating the same at and after the rates admitted by the defendants.

From this decree the plaintiff appealed to the High Court.

Mr. Branson, Mr. C. Gregory, and Baboo Grija* Sunher Mozoomdar for the appellants.

1881
BABA
CHOWDHRY
v.
ABEDOOD-
DEEN
MAHOMED.

1881 Baboo *Sreenath Dass* and Baboo *Golap Chunder Sircar* for
 the respondents.
 BABA CHOWDHRY
 v.
 AREDOOD-DEEN MAHOMED. The judgment of the Court (MORRIS and TOTTENHAM, JJ.)
 was delivered by

MORRIS, J. — In all the suits for arrears of rent out of which these appeals arise, the Subordinate Judge has declined to recognize the rates of rent fixed by the Collector in the proceedings held by him at the instance of the plaintiff under s. 10 of Beng. Act VI of 1862, and has dismissed the plaintiff's suits, save in respect of certain sums admitted by the defendants themselves. The judgment of the Subordinate Judge is appealed against, on the ground that he cannot go behind the decision of the Collector under Beng. Act VI of 1862, that the defendants made no appeal at the time against the decision under s. 10, and that, therefore, the proceedings under that section are final.

It seems to us, however, clear on the face of those proceedings, that the Collector acted without jurisdiction; and that, therefore, the Subordinate Judge is right in declining to accept the rates that have been fixed by him.

First, the Collector proceeded on the application of a fractional holder of the estate only, and not on the application, as the law requires, of "the proprietor" of it. In his plaints in the several suits before us, the plaintiff himself admits that it was he alone who instituted proceedings in the Collectorate, and that, out of the entire sixteen annas, he held a two-annas eight-gandas share only. But in numerous decisions of this Court it has been held, that an applicant under s. 10 of Beng. Act VI of 1862 must be the proprietor of the estate, not a shareholder only in the proprietary body, and that such shareholder cannot demand separate measurements; see *Mahomed Bahadoor Mojoomdar v. Rajah-Raj Kishen Singh* (1), *Moolook Chand Mundul v. Modhoosoodun Bachusputty* (2), and *Shoorender Mohun Roy v. Bhuggobut Churn Gungopadhya* (3). On the application, therefore, of the present plaintiff only, the Collector had no jurisdiction to proceed under this section. A *second*

(1) 15 W. R., 522.

(2) 16 W. R., 126.

(3) 18 W. R., 332.

fatal objection is, that the Collector did not proceed to ascertain, determine, and record the rates of rent payable in respect of the lands in question. On the contrary, he assessed them at the rates which the Amin ascertained to be prevailing in the neighbouring villages, and not in the village itself. That the Collector based his decision, as to the lands and jama-bandī, entirely upon the report and enquiry of the Amin, is indisputable. It is so stated by him in his own proceedings. But the Amin, as is apparent from his report, was unable to ascertain from the ryots themselves what the actually existing rates of rent payable by them were. He refused to accept the rates which were entered in the papers of one of the co-sharers in the estate which he saw, and he avowedly adopted the rates which he found to prevail in the neighbouring villages. It is evident, therefore, that, instead of ascertaining and recording the existing rates, he assessed what he considered to be fair and equitable rates. But this he clearly had no power to do, and the Collector was acting equally *ultra vires* in accepting, and adopting them. This is the view of the law taken in *Anunt Manjhee v. Joy Chunder Chowdhry* (1); there the learned Judges say—"In the present instance what the Revenue Officer did was to assess upon the land such rent as he thought proper." This is quite beyond the power of any one acting under s. 10 of Beng. Act VI of 1862. The sole object of that section is to authorize the Revenue Courts to ascertain for the landlord what the existing condition of his estate is, what are the measurements, what the names of the tenants, and what the rents that they are paying."

In other particulars the Collector has acted irregularly and contrary to the provisions of s. 10. But the above mentioned two instances suffice to show that he has far exceeded the power given him under s. 10, and that his decision cannot be sustained.

We, therefore, affirm the decision of the lower Court, and dismiss all these appeals with costs.

Appeals dismissed.

(1) 12 W. R., 371.

1881
 BABA
 CHOWDHRY
 v.
 ABEDDOOD-
 DEEN
 MAHOMED.