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deposed to by eye-witnesses, the production of bones, alleged to be those of a man, and discovered to be those of a woman, and the numerous false charges which are brought against innocent people, I should require the strongest possible evidence as to the fact of the murder if the dead body were not forthcoming; that evidence is, I think, wanting here.

If the evidence of Jasimuddin, his brother, and mother, as to Ram Kristo's dying declaration is put on one side, as I think it ought to be, there is no evidence to support the charges of grievous hurt and robbery.

With regard to the charge of stealing Ammuddin's boat, I do not think it can be sustained, as there is not only no evidence that the prisoner intended to convert it to his own use, and make it permanently his own property, but the evidence is entirely the other way.

The charge of the theft of the 19 hides from Raj Chunder Rishi's verandah rests entirely upon the prisoner's statement to Mookerjee, which I have already said, I think, was inadmissible.

Thus, in my opinion, all the charges against the prisoner fail, and he must be acquitted of them all and discharged from jail.

Appeal allowed.

APPELLATE CIVIL.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Ghose.

RASHBEHARI MUKHERJI AND ANOTHER (PLAINTIFFS) v. SAKHI
SUNDARI DAS (DEFENDANT).*

Ijmali mehal—Practice of separate leases by several co-sharers—Suit for enhancement by one out of a number of co-sharers, when maintainable.

The mere fact of there being other co-sharers in an undivided *mehal* is not sufficient to put the plaintiff out of Court in a suit for enhancement in respect of a particular plot of land, and the proper issue in such a case is, whether the defendant tenant has been holding under the plaintiff separately or under a joint lease from the plaintiff and his co-sharers in the *mehal*.

* Appeal from Appellate Decree No. 2414 of 1883, against the decree of J. G. Charles, Esq., Additional Judge of 24-Pergunnahs, dated the 18th of June 1883, affirming the decree of Baboo Bepin Chunder Roy, Munsiff of Diamond Harbour, dated the 30th of June 1882.

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Guni Mahomed v. Moran (1); *Jogendro Chunder Ghose v. Nobin Chunder Chottopadhya* (2), distinguished.

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THIS was a suit for rent, at an enhanced rate, for Rs. 1,287, with interest and cesses in respect of a certain plot of land in an undivided *mehal*. The defendant, Sakhi Sundari Dasi, denied having ever held under the plaintiffs, and further contended that the suit must fail as there was another co-sharer in the *mehal* who had not been made a party. A *kabuliat*, which purported to have been executed by the defendant's father in favor of Government, and a survey *chitta* were put in evidence by the plaintiff. The Munsiff was of opinion that, although it might appear from the *kabuliat* that the plaintiffs were the full owners of the tenure held by the defendant, the survey *chitta* went to show that the plaintiffs had only a half share in certain plots of land held by the defendant, and dismissed the suit with this observation: "I find the *kabuliat* to be true and genuine, but consider that it was simply for payment of rent separately, and that it did not determine the original tenure, and split it into two, so that it could be enhanced by the sharers separately (see I. L. R., 4 Calc., 96.)

On appeal, the District Judge declined to interfere with the decision of the lower Court, and relied on the following authorities: *Guni Mahomed v. Moran* (1); *Rani Saratsundari Debi v. Watson* (3); and *Jogendro Chunder Ghose v. Nobin Chunder Chottopadhya* (2).

Against that judgment the plaintiff appealed to the High Court.

Baboo *Biprodas Mukerji* and Baboo *Pran Nath Pundit* for the appellants.

Baboo *Jogendro Nath Bose* for the respondent.

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

GARTH, C.J.—This was a suit to enhance the rent of a tenure.

One of the answers made by the defendant was, that the tenure could not be enhanced, because the plaintiffs had only an undivided share in it, and that another person, named Guru-

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

(2) I. L. R., 8 Calc., 353.

(3) 2 B. L. R., 159.

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pershad, was entitled as a co-sharer, so that the plaintiffs could not, in a suit brought by them alone, without joining Guru-pershad, enhance the rent of the tenure.

The only issue that appears to have been raised in the first Court was (to use the language of the Munsiff), "are the plaintiffs co-sharers, and can they enhance"?

Both Courts have found this question in the affirmative; and upon that finding have dismissed the suit.

We have now heard the case fully argued on appeal. It has been contended by the appellants that there was no legal ground for the conclusion at which the lower Courts have arrived; and, having examined the evidence, we are led to believe that the lower Courts' judgment is founded upon some misapprehension both of law and fact.

In the first place it seems to have been assumed—and so far as we can see erroneously assumed—that the two Full Bench decisions of this Court, *Guni Mahomed v. Moran* and *Soorja Proshad Mytse v. Joynarain Hazra* reported in I. L. R., 4 Calc., 96, and the case of *Jogendro Chunder Ghose v. Nobin Chunder Chottopadhya* in I. L. R., 8 Calc., 353, are applicable to the present case.

In these cases it was an established fact that the tenant had originally held a tenure under several co-sharers at an entire rent, and that afterwards an arrangement was made by which the tenant paid a proportion of his rent severally to each of the co-sharers. It was held that under these circumstances, although each co-sharer could enforce from the tenant the payment of rent separately, he could neither sue for a *kabuliat* for such rent nor bring a suit to enhance it, because such suits would be inconsistent with the continuance of the original joint tenure.

Now let us see what the facts are in the present case.

Some fifty years ago, it appears that the defendant's father took from the Government a *jote* of some 5 bigahs of land. This land formed part of an estate numbered 312, which was then in the hands of the Government, and the defendant's father gave the Government a *kabuliat* for the land at a rent of 7 rupees.

The defendant at the trial denied this *kabuliat*, and said that her father had never held under it; but the lower Courts have

both found that the *kabuliat* was genuine; and that her father did hold under it.

This *kabuliat*, so far as we can see, is the earliest evidence of the defendant's father's title to the property, and we find no ground for assuming that at the time when the *kabuliat* was given the defendant's father possessed any other estate or tenure in the land.

That being so, it would follow, in the absence of evidence to the contrary, that these 5 bighas of land which have apparently been in the possession of the defendant and her father ever since, formed a separate holding, at first under the Government, and afterwards under the person or persons to whom the Government conveyed the estate of which the 5 bighas formed a part.

Then it also appears that the Government afterwards settled, this estate, No. 312, with the plaintiffs' predecessors in title and there would have been no reason to suppose that any third person was interested in the defendant's tenure, but for a measurement *chitta*, which was put in evidence by the plaintiffs, and from which it would appear that another person, one Gurupershad, had in some way or other acquired an interest with the plaintiffs in the estate.

From this *chitta* the lower Courts appear to have drawn the inference, not only that at the present time the defendant is holding under the plaintiffs and Gurupershad jointly, but that at the time when the *kabuliat* was given, 50 years ago, the defendant's father was holding under some joint tenure, which has continued to exist up to the present time, and upon this assumption the lower Courts have held that the Full Bench cases, to which I have referred, are applicable here, and that the plaintiffs have no right to sue for an enhancement of the defendant's *jumma*.

Now we are unable to find any legal ground for the inference which the lower Courts have drawn. We can discover no evidence, nor any reason to suppose, that at the time when the *kabuliat* was given there was any joint tenure in existence, under which the defendant's father was holding; and if, (as we decided in the Full Bench cases, before mentioned) the giving of a separate *kabuliat* by a tenant to one landlord is inconsistent with

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the continuance of a joint tenancy by the same tenant under several landlords, the fact of this separate *kabuliat* having been given to the Government would rather tend to show that at that time the Government, and the Government alone, were the owners of the land included in the *kabuliat*.

It no doubt appears that the defendant's holding is larger now than 5 bighas; and it may be that either from the Government or from the plaintiffs' predecessors in title, or by some other dealings with the property which have not yet come to light, Gurupershad or others may have obtained a share in the lands which the defendant now holds; but if this is so, it by no means follows that the defendant does not hold a share from the plaintiffs at a separate rent, or that such rent may not be enhanced in this suit.

Co-sharers in *ijmali* properties may, and often do, make separate leases to the same or different tenants of their undivided shares, and, as at present advised, we can see no valid reason why the rent of such holding should not be enhanced.

It is true that in one case, to which we were referred, it would seem that a learned Judge of this Court had expressed an opinion that the enhancement clauses of the Rent Law did not apply to separate leases of undivided properties; but the opinion which he expressed appears to have been somewhat extra-judicial, and at present we are not aware of any authority which is opposed to enhancement in such cases.

We think, therefore, that the case must be remanded to the Munsiff's Court, to ascertain, in the first place, with due regard to the observations which we have made, whether the defendant now holds under the plaintiffs separately, or under a joint lease from the plaintiffs and others. In the latter case it might be advisable, if there is no objection to that course, that the plaintiffs' co-sharers should be made parties to this suit.

If there should appear to be no objection to the suit proceeding, the Court will then have to deal with the question of enhancement.

The costs in this and the other Courts will abide the result.

Suit remanded.