

Before Mr. Justice Cunningham and Mr. Justice Maclean.

1883
February 8.

BIDHU BHUSHUN BASU AND OTHERS (PLAINTIFFS) v. KOMARADDI
MUNDUL AND ANOTHER (DEFENDANTS).*

*Enhancement of rent, Suit for—Co-sharers—Notice of enhancement—
Parties.*

A and *B* were taluqdars of a certain village, each having an eight annas share. A certain ryot held a jote within the village, in respect of which he paid his rent separately—eight annas to *A* and eight annas to *B*. *A* served a notice of enhancement on the ryot, but the notice was signed by *A* only, and it did not appear that the consent of *B* had been previously obtained. *A* afterwards instituted a suit for arrears of rent at the enhanced rate, making *B* a defendant to the suit.

Held, that the notice of enhancement was sufficient to maintain a suit so framed.

In this case it appeared that village Baruipara, in pergunnah Mahomedshahi, station Nowpara in the District of Nuddea, was the patni taluk of the plaintiffs and one Shoshi Bhusun Sircar, the share of the plaintiffs being eight annas. Komaraddi Mundul was a ryot having a right of occupancy within the taluk, and who paid his rent separately—eight annas to the plaintiffs and eight annas to Shoshi Bhusun Sircar. The plaintiffs served a written notice of enhancement on Komaraddi Mundul, but this notice was not signed by Shoshi Bhusun Sircar, nor had his consent to serve it been previously obtained. Komaraddi neglected to pay the enhanced rent required, and the plaintiffs brought the present suit against him for arrears of rent at the enhanced rates mentioned in the notice. Shoshi Bhusun Sircar was made a party defendant to the suit. The Court of first instance dismissed the suit on the authority of *Guni Mahomed v. Moran* (1), and this decision was upheld on appeal, the Judge citing *Kasheekishore Roy Chowdhry v. Akip Mundul* (2).

* Appeal from Appellate Decree No. 1323 of 1881, against the decree of Baboo Amrito Lall Chatterjee, Subordinate Judge of Nuddea, dated the 4th April 1881, affirming the decree of Baboo Behari Lall Banerjee, Second Munsiff of Kooshtea, dated the 11th March 1880.

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

(2) I. L. R. 6 Calc., 140.

The plaintiffs appealed to the High Court on the ground that the lower Court was wrong in declaring the notice insufficient.

Baboo *Mohini Mohun Roy* and Baboo *Kali Churn Banerjee* for the appellants.

Baboo *Sreenath Banerjee* for the respondents.

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

CUNNINGHAM, J.—This was a suit for rent at an enhanced rate. The defence raised was that the notice of enhancement was signed, not by the whole body of landlords, but by the plaintiffs alone, who held an eight annas share, and separately collected their rent from the defendants. The question we have to decide in second appeal is, whether this notice was good. This question has, in our opinion, been decided in the affirmative by the observations of the Chief Justice in the Full Bench case of *Chuni Singh v. Hera Mahto* (1). We understand the meaning of the Chief Justice to be that a suit by a portion of the co-sharers for rent at an enhanced rate may be brought, provided the other co-sharers are joined in the suit either as plaintiffs or defendants; and that, in such a case, notice may be duly given by that portion of the co-sharers by which the suit is instituted. We think, therefore, that the question is no longer open to discussion. The present appeal must accordingly be admitted, and the case remanded to the Court of first instance for trial on the merits.

Appeal allowed and case remanded.

Before Mr. Justice Cunningham and Mr. Justice Maclean.

KEDARNATH MITTER (PLAINTIFF) v. SURENDRO DEB ROY AND OTHERS (DEFENDANTS).*

1883
April 30.

Registration Act (III of 1877), s. 17—Lease or agreement to lease.

In a suit for possession of certain property and for the execution of a pottah, it appeared that two of the defendants had executed an agreement which was duly registered, by which they acknowledged the receipt of a

*Appeal from Original Decree No. 98 of 1881, against the decree of Baboo Boobun Chunder Mukerjee, First Sub-Judge of Alipore, dated the 10th February 1881.

(1) I. L. R., 7 Calc., 633.