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 THE SECRETARY OF
 STATE FOR
 INDIA IN
 COUNCIL
 v.
 RASBEHARY
 MOOKERJEE.

section in question does not require the names of the recorded proprietors to be mentioned in the notification, the mistake of not inserting the names of all the recorded proprietors is not an irregularity within the meaning of that section.

We therefore reverse the decree of the lower Appellate Court and dismiss the plaintiff's suit with costs.

In Appeal No. 865, the purchaser is the appellant. We are of opinion that the purchaser might have joined the Government in preferring an appeal. We therefore direct that the plaintiffs will pay to the defendants, namely, the Secretary of State for India and the purchaser Purnu Chunder Singh, only one set of costs throughout the litigation.

Appeal allowed.

FULL BENCH REFERENCE.

1883
 February 28.

Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice McDonell, Mr. Justice Prinsep and Mr. Justice Wilson.

TULSI PANDAY (DEFENDANT) v. BUCHU LALL (PLAINTIFF).*

Bengal Act VIII of 1869, s. 102—Practice—Appeal—Second Appeal.

In a suit for arrears of rent and ejection the right of appeal is taken away by s. 102, Beng. Act VIII of 1869, only when it is shown that the amount sued for and the value of the property claimed is less than Rs. 100. Unless that fact appears, either from the finding of the District Judge or elsewhere upon the proceedings, the High Court has no right to draw any inference to that effect.

THIS was a suit for arrears of rent amounting to Rs. 16-1-3, and for ejection. The defence was, amongst other things, that the defendant held more lands than the plaintiff admitted in his plaint; that the annual jumma of the defendant's land was Rs. 5-1 of which the plaintiff's share was Rs. 2-8-6; that the defendant had paid to the plaintiff the rent of 1284 F. S.; and that he had deposited in Court the rent for the years 1285 F. S. and 1286 F. S. The Court of first instance gave the plaintiff a decree. On appeal the defendant urged that the plaintiff, being a cosharer, was not entitled to eject the defendant. The District Judge overruled the objections and dismissed the appeal. The defendant ap-

*Full Bench Reference made by Mr. Justice Mitter, Offg. Chief Justice, and Mr. Justice Norris, dated the 4th August 1882, in appeal from Appellate Decree No. 586 of 1882.

pealed on the ground "that the plaintiff being only a part owner of the lands in suit, his prayer for ejection under section 52 of the Rent Act should have been rejected."

The case came before MITTER, J., (Offg. C.J.) and NORRIS, J., by whom it was referred to a Full Bench with the following remarks:—

MITTER, J.—This appeal arises out of a suit which was brought for the recovery of arrears of rent, and for ejection of the defendant, appellant. It is admitted that the plaintiff is the owner of a fractional share of the estate within which the defendant's tenure is situated; it is also admitted that the plaintiff is entitled to maintain a separate suit for the rent of his share. One of the questions raised in the defence was, that the plaintiff being the owner only of a fractional share of the estate in which the defendant's tenure is situated, is not entitled to a decree for ejection under s. 52 of the Rent Act. The lower Courts are of opinion that the plaintiff is entitled to a decree for ejection.

We cannot agree with the lower Courts in this view of the law. The point in question has been set at rest by authority, and we will only refer to the last case on the subject—*Reasut Hossein v. Chorwar Singh* (1). The same view of the law was taken in another decision—*Alum Manjee v. Ashad Ali* (2). We are therefore clearly of opinion that the decree for ejection passed in this case cannot be sustained.

But the learned pleader for the respondent has taken a preliminary objection to the hearing of this appeal. The objection is based on the provisions of s. 102 of Beng. Act VIII of 1869. That section says: "Nothing in this Act contained shall be deemed to confer any power of appeal in any suit tried and decided by a District Judge originally or in appeal, if the amount sued for, or the value of the property claimed, does not exceed one hundred rupees." In this case the rent claimed was Rs. 16-1-3, but it does not appear what was the value of the defendant's interest in the land from which it was sought to eject him.

In our opinion, unless it can be shown that the value of that interest and also the amount of rent sued for do not exceed

(1) I. L. R., 7 Calc., 470.

(2) 16 W. R., 138.

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Rs. 100, the right of second appeal is not taken away under that section; but this view of the law is in conflict with a decision of this Court in *Parbutty Churn Sen v. Shaik Mondari* (1). We therefore refer the following question to the decision of a Full Bench, whether, under the circumstances stated above, a second appeal lies to this Court?

Baboo *Bussunto Coomar Bose* for the appellant.

Baboo *Jogesh Chunder Roy* for the respondent.

The judgment of the Full Bench on the point referred was delivered by

GARTH, O.J. — It seems to us that the view taken by the learned Judges who referred this case is correct. *Prima facie* in a suit of this kind the appellant is entitled to a second appeal. The question is, whether that right is taken away by s. 102 of Beng. Act VIII of 1869? That section only applies where the amount sued for, or the value of the property claimed, does not exceed Rs. 100.

In this case there is nothing to show that the value of the property claimed does not exceed Rs. 100; and unless that fact does appear, either from the finding of the lower Court, or elsewhere upon the proceedings, it seems to us that we have no right, (more especially as we are only empowered here to deal with points of law) to draw any inference to that effect.

We are, therefore, of opinion, that this Court has jurisdiction to entertain the appeal; and as the Division Bench has already decided that the lower Courts were wrong in decreeing the ejection, we think that the judgment should be modified accordingly, and that the defendant should be allowed his costs of appeal in all the Courts, so far as they relate to that point.

Appeal allowed.

(1) I. L. R., 5 Calo., 594.