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him to proceed to make upon the proper materials a judicial enquiry upon the petition filed under s. 21 of the Act; and before proceeding to such enquiry he should call upon the petitioner to amend her petition by stating distinctly the sufficient cause alleged for the recall of the certificate.

MITTER, J.—The petition of appeal in this case, which is alleged to be on appeal against the District Judge's order of the 22nd of June 1883, mixes up with the matter of that order a further matter concerned with the order of the 23rd June with which we have just dealt. It appears to us that as so much of the certificate as appointed Noorjehan Begum guardian of the children was never set aside, and as she therefore continues to be the guardian and entitled to the custody of the minors, the Judge was correct in directing the minors to return to her custody. We, therefore, decline to interfere with this portion of the Judge's order.

Appeal allowed in part and order varied.

Before Mr. Justice Tottenham and Mr. Justice Norris.

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January 24.

BOIDO NATH MASHANTA AND OTHERS (DEFENDANTS) *v.* J. W. LAIDLAY AND OTHERS (PLAINTIFFS).*

Enhancement of rent, Suit for—Service of Notice of Enhancement—Bengal Act VIII of 1869, s. 14.

Service of notice of enhancement under s. 14 of Bengal Act VIII of 1869 must be made strictly in the manner provided by that section. *Chunder Monee Dossee* v. *Dhuroneedhur Lahory* (1) followed.

When a tenure was held by a Hindu and three Santhals, and it was shown that service of the notice of enhancement had been personal on the latter, but only on the son of the former, who was an adult and living with his father as a member of a joint Hindu family, *Held*, that this was not sufficient service on the Hindu tenant.

Quære.—Whether, if it had been shewn that the notice, though served on the son had come into the hands of the father, that would not amount to a sufficient service of the notice.

THIS was a suit for arrears of rent at an enhanced rate after an alleged service of notice of enhancement. The only material

* Appeal from Appellate Decree No. 288 of 1883, against the decree of W. F. Meres, Esq., Officiating Judge of Midnapore, dated the 31st August 1882, affirming the decree of Baboo Sham Chand Roy, Munsiff of Gurbetta, dated the 20th September 1881.

(1) 7 W. R., 2.

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point in the case was as to the sufficiency of the service of such notice. For this point the facts are sufficiently stated in the judgment of the High Court.

Baboo *Prannath Pundit* for the appellants.

Baboo *Bhowani Churn Dutt* for the respondents.

The judgment of the High Court (TOTTENHAM and NORRIS, JJ.) was delivered by

TOTTENHAM, J.—In this case we feel constrained, though reluctantly, to hold that the lower Courts were wrong in deciding that there has been service of notice of enhancement upon the defendant No. 1.

The tenants are four in number, one being a Hindu and the other three Santhals. The Courts found that the notice of enhancement had been personally served upon the three Santhals. There was no personal service upon the Hindu tenant, but it was found that his son, who is an adult, had received the notice. The Courts below have held that this was sufficient service within the meaning of the law.

Section 14 of the rent law provides that the notice shall, if practicable, be served personally upon the ryot. If for any reason the notice cannot be served personally, it shall be affixed at his usual place of residence. The law does not provide that service on any member of his family or any other person shall suffice.

Our attention has been called by the respondents' pleader to the case of *Nobodeep Chunder Shaha* v. *Sonaram Dass* (1), in which it was held that where the tenure was owned by a joint Hindu family, it is sufficient service of notice of enhancement under s. 14 of the Rent Act, if any one of the co-sharers is served with the notice. That case does not apply to the present one, for the tenants are not members of a joint Hindu family. If they were, the service on defendants 2, 3, and 4 would, no doubt, have been sufficient. On the other hand, for the appellant the case of *Chunder Monee Dossee* v. *Dhuroneedhur Lahory* (2) has been cited, in which Sir Barnes Peacock held that service of notice must be strictly in the manner provided

(1) L. R., 4 Calc., 592. (2) 7 W. R., 2.

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by the Act, and that if the notice was served upon the agent of a defendant who was a *purdahnusheen* lady, even if the agency were established, that would not suffice.

It seems to us that we are bound to follow this authority, which is literally in accordance with the words of the Act.

We have been asked to take it that the lower Courts found that the notice, though served upon the son of the defendant, reached his, the defendant's, hand, and if we could be satisfied that such was the finding of the lower Courts, we should be disposed to think it sufficient, but we do not find this to be so. The first Court thought that most probably the notice was communicated to the defendant No. 1 by his son. The lower Appellate Court thought that the service effected on the adult son of defendant No 1, who was living as a joint member of a Hindu family with his father, was a good service.

We think we are bound to insist upon the terms of the law being literally carried out. We must, therefore, set aside the decrees of the lower Courts and direct that the suit be dismissed.

Under the circumstances we make no order as to costs.

Appeal allowed.

Before Mr. Justice Mitter and Mr. Justice Maclean.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT) *v.* NUNDUN LALL (PLAINTIFF).*

1884 *January* 18.

Partition—Butwara—Revenue-paying Estate—Beng. Act VIII of 1876, *Part.* II *and s.* 4, *cl.* (8) *and* (9)—*Civil Procedure Code (Act XIV of* 1882), *s.* 265.

In 1851 an estate was brought under *butwara* under the provisions of Regulation XIX of 1814. At such *butwara* a portion of the estate being land covered with water and unfit for cultivation was not divided, but left joint amongst all the co-sharers, the land-revenue payable on account of the whole estate being apportioned amongst the several estates into which the portion divided was split up. Subsequently, on the portion remaining joint becoming dry and fit for cultivation, an application was made by one of the co-sharers to the Collector to partition the same under the provisions of Beng.

* Appeal from Appellate Decree No. 2370 of 1882, against the decree of A. W. Cochrane, Esq., Officiating Judge of Tirhoot, dated the 21st August 1882, affirming the decree of Baboo Mohendro Nath Bose, Subordinate Judge of that District, dated the 14th September 1881.