

## APPELLATE CIVIL.

*Before Mr. Justice Prinsep and Mr. Justice Beverley.*

BUNWARI LAL CHOWDHRY AND OTHERS (DEFENDANTS), v. BURNO-MOYI DAS (PLAINTIFF).<sup>a</sup>

1887  
May 19.

*Land Acquisition Act (X of 1870)—Apportionment of compensation between zemindar and putnidar, Principle of.*

The apportionment between zemindar and putnidar of the amount awarded as compensation for land taken by Government under the Land Acquisition Act will depend partly on the sum paid as bonus for the putni, and the relation that it bears to the probable value of the property, and partly on the amount of rent payable to the zemindar, and also the actual proceeds from the cultivating tenants or under-tenants.

THIS case arose under the Land Acquisition Act. The Government took up 2 bighas  $2\frac{3}{4}$  cottahs of land for the purposes of a railway in the sub-division of Goalund in Furreedpore. The Collector awarded Rs. 64-3-3 pie as compensation, and, there being a dispute between the zemindar and the putnidars as to the apportionment of the amount awarded, referred the matter to the District Judge under s. 38 of the Land Acquisition Act. The zemindar claimed half the amount; but the putnidars claimed the whole of the compensation on the ground, among others, that there was no condition in the putni pottah that they should get an abatement in the *jumma* from the proprietor (zemindar) in the event of any land being taken by the Government. The District Judge, upon the general principle laid down in *Godadhar Das v. Dhunput Singh* (1), ordered and decreed that the compensation should be divided equally between the zemindar and the putnidars.

The putnidars appealed to the High Court, and it was contended on their behalf *inter alia* (a) that they were entitled to the whole of the compensation unless the zemindar offered to grant a proportionate abatement of the putni rent; (b) that *Godadhar Das v. Dhunput Singh* (1) did not apply to the case.

Baboo *Kishori Lal Sircar* for the appellants.

<sup>a</sup> Appeal from Original Decree No. 216 of 1886 against the decree of H. Gillon, Esq., Judge of Furreedpore, dated the 16th of July, 1886.

(1) I. L. R., 7 Calc., 585.

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Baboo *Girija Sunkur Mozoomdar* for the respondent.

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The judgment of the Court (PRINSEP and BEVERLEY, JJ.) was as follows :—

The dispute in this case is between the zemindar and the putnidar for a sum of money due to the two parties as representing their rights to land taken under the Land Acquisition Act for public purposes. No ryots have appeared to make any claim. The District Judge, on the authority of the case of *Godadhar Das v. Dhunput Singh* (1), has held that the compensation should be divided equally between the zemindar and the putnidar, and that no reason for departing from this rule has been shown in the present case. The putnidar appeals, and contends that, inasmuch as he has received no abatement of the amount of rent payable by him to the zemindar, he is entitled to the full amount awarded. The amount in this case is only Rs. 64-3-3 pie, but it is said that this is only a test suit and has been brought up to this Court to determine the principle on which other and similar cases should be decided. We accept the authority quoted by the District Judge and also the authority of the case of *Raikishory Dasi v. Neelcant Dey* (2), decided by the late Chief Justice Sir Richard Couch and Mr. Justice McDonnell. It seems to us that no general principle can be laid down applicable to every case as between zemindar and putnidar. In the present case we must take it that the putnidar is the person to whom the ryots directly paid their rents. The apportionment between the zemindar and putnidar will depend partly on the sum paid as bonus for the putni, and the relation that it bore to the probable value of the property, and partly on the amount of rent payable to the zemindar, and also the actual proceeds from the cultivating tenants or undertenants. It may occasionally happen that the zemindar receives an extremely high bonus and is content with charging the property with the receipt of a very low rate of rent, or it may be that the bonus is almost nominal and the rent is excessively high, and the zemindar depends not on the bonus and the interest of the amount so paid and invested in some other way, but on the amount paid periodically as rent, and consequently as between

(1) I. L. R., 7 Calc., 585.

(2) 20 W. R., 370.

parties standing in these relations it is necessary to consider all these matters before any conclusion can be arrived at as to their rights to any particular compensation. We therefore think that the case should be returned to the District Judge in order that the parties may be given an opportunity of adducing evidence on these points so that the Court may deliver a proper decision having regard to all these circumstances. We make no order as to costs.

K. M. C.

*Case remanded.**Before Mr. Justice Prinsep and Mr. Justice Beverley.*

OBHOYA CHARAN BHOOLA AND ANOTHER (DEFENDANTS) v. KOILASH CHUNDER DEY (PLAINTIFF),

AND

OBHOYA CHARAN BHOOLA AND ANOTHER (DEFENDANTS) v. GOPINATH DEY AND OTHERS (PLAINTIFFS).\*

1887  
June 3.*Landlord and Tenant—Occupancy tenent—Non-payment of rent—Abandonment of tenancy.*

Mere non-payment of rent by an occupancy ryot does not extinguish or constitute an abandonment of the tenancy. *Hem Chandra Chowdhari v. Chand Akund* (1) distinguished; *Hemnath Dutt v. Ashgar Sindar* (2); *Golam Ali Mundul v. Golap Sundery Dasi* (3); *Manirullah v. Ramzan Ali* (4) explained.

KOILASH CHUNDER DEY brought a suit against his zemindar Obhoya Charan Bhoola and another for the recovery of his *jote* land, alleging wrongful dispossession of his occupancy tenure. The defendant admitted the *jote*, but added that, as the tenant did not pay any rent for a period of five years, he had taken possession of the land. A similar case was brought by Gopinath Dey against the same zemindar. The Munsiff, on the authority of *Hem Chandra Chowdhari v. Chand Akund* (1), dismissed the suits. On appeal the Subordinate Judge distinguished the case of *Hem Chandra Chowdhari* and reversed the Munsiff's judgment.

\* Appeals from Appellate Decrees Nos. 2588 and 2589 of 1886, against the decrees of Baboo Ram Coomar Pal Chowdhry, Rai Bahadur, Subordinate Judge of Sylhet, dated the 22nd of September, 1886, reversing the decrees of Baboo Rojoni Nath Mitter, Munsiff of Habigunge, dated the 21st of May, 1886.

(1) I. L. R., 12 Calc., 115.

(3) I. L. R., 8 Calc., 612.

(2) I. L. R., 4 Calc., 894.

(4) I. C. L. R., 293.

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