

## CIVIL REFERENCE.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.

IN THE MATTER OF THE PETITION OF FAZEL ALI CHOWDHRY AND  
OTHERS,

1887  
July 18.

FAZEL ALI CHOWDHRY AND OTHERS v. ABDUL MOZID CHOWDHRY  
AND OTHERS.\*

*Bengal Tenancy Act (VIII of 1885), s. 93—Manager—Co-sharers—Practice in making applications under s. 93 of Act VIII of 1885 where the co-sharers hold various and complicated shares in the property—Notice.*

Where a property consisted of 243 estates or tenures, sixty of which were entered under separate numbers in the Land Register of the Collector, other portions of the property being taluks, dependent tenures, and ryoti holdings, and a single application is made by twelve of the co-sharers in such property (many of whom held shares in several of the tenures and estates) calling upon the remaining four sharers in the property to show cause why a common manager should not be appointed under s. 93 of the Bengal Tenancy Act, the Court should, before granting the application, call upon the applicants to state whether all of them are entitled in common to the various estates and tenures and, if not so entitled, should call upon them to divide themselves into as many groups as there are properties held by them in common; and in the latter case each group of shareholders should put in separate applications, on which separate Court-fees should be levied. The notice in the case of tenures should be as provided by s. 93 of the Act, and should be of the same character and to the same effect as in the case of estates.

THIS was an application made jointly by twelve of the co-sharers of a certain property under s. 93 of the Bengal Tenancy Act, calling upon the four remaining sharers in the property to show cause why a common manager should not be appointed to certain property consisting of 243 estates or taluks, of which about 60 bore separate numbers on the Collector's Land Register, whilst other portions of the property were taluks and dependent tenures, howlahs and ryoti holdings, and did not therefore appear in the Collector's Register at all. The petitioners were holders of different proportions of the entire property; for

\* Civil Reference No. 8A of 1887 made by J. Posford, Esq., Judge of Backergunge, dated the 29th of April, 1887.

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example, petitioner No. 11 had a 1 anna  $15\frac{1}{2}$  gundas share in ten of such estates; petitioner No. 12 had a 2 annas  $13\frac{1}{4}$  gundas share in estate No. 214, and also a 2 annas 9 gundas share in estate No. 215; petitioner No. 1 had a 17 gundas 3 karas share in estate No. 58 of such properties and a 2 annas 13 karas share in two others; and the four persons called upon to show cause likewise held various shares in many of the estates. The grounds on which the application was made were that there existed disputes which were likely to lead to normal injuries to private rights in the collection of rents and the letting out of these lands.

The opposite party made no objection to the appointment of a manager.

The District Judge being of opinion that it was inexpedient to deal with all these properties by one single order, seeing that the interest of the different parties were so various and complicated, considered that a separate application should be made with regard to each separate estate, and, further considering that great difficulty would arise in determining the question on whom and in what manner notice ought to be served with regard to the inferior tenures and holdings which did not appear in the Collector's Register, referred the following questions to the High Court before dealing finally with the application, *viz.*—

(1) Whether the application then before him should be considered as one miscellaneous case, and be dealt with as one application, or whether there should be as many applications as there were estates or tenures.

(2) Whether the usual Court-fee should be levied on each application (if more than one application should be thought necessary), or whether a separate Court-fee should be levied in respect of every estate or tenure.

(3) When a petition under s. 93 of the Act relates to properties or tenures that do not appear in the Collector's Register, what is the proper notice to be given to the co-sharers?

Neither party was represented at the hearing of the reference.

The opinion of the Court (PETHERAM, C.J., and GHOSE, J.) was as follows:—

We think that the questions submitted by the Judge should be answered as follows:—

(1) There need not be as many applications as there are estates or tenures mentioned in the application. But in the circumstances as disclosed in the reference it would be necessary for the Judge to call upon the applicants to state whether all of them are entitled in common to the various estates and tenures mentioned in the application; and if not to divide themselves into as many groups as there may be properties held by them in common. In this latter case it would be necessary that each group of shareholders should put in separate applications.

(2) If such separate applications have to be put in and not otherwise, separate Court-fees should be levied upon each application.

(3) The notice in the case of tenures will be as provided by s. 93 of the Bengal Tenancy Act; it will be of the same character and to the same effect as in the case of estates.

T. A. P.

## APPELLATE CIVIL.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.*

MASEYK (JUDGMENT-DEBTOR) *v.* STEEL & Co. AND ANOTHER (DECREE-HOLDERS), (AUCTION-PURCHASERS).<sup>o</sup>

1887  
July 11.

*Execution of decree—Mortgage decrees for sale of properties in different districts and jurisdictions—Civil Procedure Code (Act XIV of 1882), ss. 19, 223 (c), Sch IV, Form 128—Jurisdiction.*

A decree obtained in a suit, brought under the provisions of s. 19 of the Code of Civil Procedure in the Court of the Subordinate Judge of Rajshaye on a mortgage of certain properties situated in the districts and jurisdictions of Rajshaye and Nyadumka, directed that the properties mentioned in the mortgage should be sold and the proceeds applied in payment of the mortgage debt. The properties were sold by the Court of Rajshaye. *Held* that the authority given by s. 19 of the Code included an authority to make the order for the sale of the properties, and that the Rajshaye Court was within its jurisdiction in directing and carrying out the sale.

<sup>o</sup> Appeal from Order No. 79 of 1887, against the order of Baboo Aghore Nath Ghose, Subordinate Judge of Zillah Rajshaye, dated the 23rd of February, 1887.