

the amount of damage to be sustained by the one side or the other from the granting or withholding of the injunction.

On the other hand, a rule in conformity with the English decisions has been acted upon in a number of cases—*Lala Biswambhar Lal v. Rajaram* (1); *Dwarkanath Bhooyea v. Gopeenath Bhooyea* (2); *Sree Chand v. Nim Chand Sahoo* (3); *Crowdy v. Inder Roy* (4); *Massim Mollah v. Panjoo Ghoramee* (5); *Nicholl v. Tarinee Churn Bose* (6); *Mohima Chander Ghose v. Madhub Chunder Nag* (7); *Rajendra Lall Gossami v. Shama Churn Lahori* (8); *Nocury Lall Chuckerbutty v. Bindabun Chunder Chuckerbutty* (9).

We think that the granting of an injunction is a matter in the judicial discretion of the Court, and that the District Judge took a correct view of the law applicable to the case.

We think also that having regard to the facts of the case, he exercised his discretion rightly in refusing the injunction asked for. The appeal will, therefore, be dismissed with costs.

T. A. P.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice Beverley.

PREM CHAND NUSKUR AND ANOTHER (DEFENDANTS) v. MOKSHODA DEBI (PLAINTIFF).*

1887

January 17.

Bengal Tenancy Act (VIII of 1885), s. 188—Co-sharers, Suit by.

Section 188 of the Bengal Tenancy Act applies only to such matters as a landlord is, under the Act, authorized or required to do; there is nothing in that Act which requires or authorizes a landlord to sue thereunder for arrears of rent.

One of several joint landlords is competent to sue for the entire rent due from a tenant making his co-sharers parties to the suit.

* Miscellaneous Appeal No. 356 of 1886, from the decision of C. B. Garrett, Esq., District Judge of the 24-Pergunnahs, dated 31st July, 1886, reversing the decision of Baboo Triguna Prasunno Bose, Munsiff of Alipore, dated 22nd June, 1886.

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| (1) 3 B. L. R., App., 67; 13 W. R. 337 (<i>note</i>) | (5) 21 W. R., 573. |
| (2) 12 B. L. R., 189 (<i>note</i>) | (6) 23 W. R., 238. |
| (3) 5 B. L. R., Ap. 25; 13 W. R., 337. | (7) 24 W. R., 80. |
| (4) 18 W. R., 408. | (8) I. L. R., 5 Calc., 188. |
| (9) I. L. R., 8 Calc., 708. | |

THIS was a suit for arrears of rent of thirty-one bighas of paddy and homestead lauds held jointly by the defendants Nos. 1 and 2 under the plaintiff, and two other persons, defendants Nos. 3 and 4.

The plaintiff, on account of the refusal of defendants Nos. 3 and 4 to join with her as plaintiffs in the suit, made them *pro-formâ* defendants, bringing the suit for the arrears due to all the co-sharers, and praying for a decree (a) for the entire rent; and (b), for the amount due to her as her share therein, together with costs and damages.

Defendants Nos. 1 and 2 alleged in their written statements that they were unaware that the plaintiff had a right to claim a share of rent from them; that they were unaware whether the plaintiff was a co-proprietor with the *pro-formâ* defendants, or that she had ever been in receipt and enjoyment of the rents jointly with the latter; and submitted that the suit being for fractional shares of rent would not lie under s. 188 of Act VIII of 1885.

The Munsiff held that the suit would not lie, and that the plaintiff should first sue to establish her right as a co-proprietor, as this right had been virtually denied; but that even had this been done, the suit would not lie, there being no agreement, either express or implied, by the defendants to pay the rent in fractional shares: that moreover s. 188 of the Rent Act provided that the joint landlords could not sue separately to recover their rent, but must either sue separately or through a manager; he therefore dismissed the suit.

The plaintiff appealed to the District Judge, who held that s. 188 merely laid down that, when persons are joint landlords, any act which they were required or authorised to do under the Tenancy Act must either be done by them acting jointly or acting through a joint manager. But that, as under that Act, a landlord was neither authorised or required to sue for rent, the suit was not liable to be dismissed under that section. He therefore allowed the appeal.

The defendants appealed to the High Court, making the plaintiff and *pro-formâ* defendants respondents in the appeal.

Baboo *Taruknauth Paulit* for the appellants referred to ss. 54, 93 and 188, Act VIII of 1885, and contended that rent suits were contemplated by the Act.

Baboo *Gurudas Banerji* and Baboo *Surendra Nath Matilal* for the respondents were not called upon.

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

In this case the plaintiff states that she is one of three landlords of the defendants, tenants, and she sues for the entire rent due from the tenants, making her co-sharers defendants also because they refused to join in the suit.

The Munsiff dismissed the suit, holding that it was barred under s. 188 of the Bengal Tenancy Act, but on appeal the District Judge has set aside that decision, on the ground that s. 188 does not apply.

In our opinion the view taken by the District Judge is correct. Section 188 applies only to anything which the landlord is, under the Bengal Tenancy Act, required or authorised to do. We can find nothing in the Act which authorises a landlord to bring a suit against a tenant for recovery of arrears of rent. The terms of the section should, in our opinion, be strictly construed, for we cannot assume that the Legislature intended to alter the practice of our Courts as established by numerous decisions for years past. (1) The appeal is, therefore, dismissed with costs.

T. A. P.

Appeal dismissed.

(1) [NOTE.—This view of s. 188 of Act VIII of 1885 was taken in the case of *Umesh Chunder Roy v. Nasir Mullick*, Civil Reference No. 20A of 1887, decided by PETHERAM, C.J., and CUNNINGHAM, J., on the 7th February 1887, in which the decision in the case of *Frem Chand Nuskur v. Mokshoda Debi* was followed.]
