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Now under the Hindu law, we think that the relations of her deceased husband are entitled to be the guardians of a Hindu widow in preference to her paternal relations. This is clear from the text of Nareda, Chapter XIII, *verses* 28, 29, cited in the Daya-bhaga, Chapter XI, s. 1, paragraph 64. That text runs thus:— "When the husband is deceased, his kin are the guardians of his childless widow. In the disposal of the property and care of herself as well as in her maintenance they have full power. But if the husband's family be extinct, or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the degree of a *sapinda*." This text has been followed in three cases, one to be found in Macnaghten's Principles and Precedents of Hindu Law, Volume II, page 203; another, *Kishen Mohan Mitter* v. *Khettermoni Dassi* (1); and a third, the case of *Bai Kisar* v. *Bai Gunga* (2).

This, we think, is ample authority in support of the appellant's contention, and the certificate in this case ought therefore to be granted to the appellant against whose fitness nothing has been said.

The result is that the appeal will be allowed with costs.

J. V. W. *Appeal allowed.*

Before Mr. Justice Wilson and Mr. Justice Tottenham.

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AKSHAYA KUMAR DUTT (DEFENDANT) *v.* SHAMA CHARAN PATITANDA (PLAINTIFF).*

Enhancement of rent—Settlement of a Government Khas Mehal—Regulation VII of 1822—*Bengal Act III of* 1878—*Bengal Act VIII of* 1879, *ss.* 10—14.

In order to make the enhanced rent, stated in a *jummabundi*, settled under Regulation VII of 1822, binding upon a tenant, there must be either an assent to that enhancement, or else a compliance with the provisions of the rent law, with reference to enhancement of rent, in force at the time of such enhancement.

* Appeal from Appellate Decree No. 1057 of 1888, against the decree of C. B. Garrett, Esq., Judge of 24-Pergunnahs, dated the 14th of March 1888, affirming the decree of Baboo Srinath Pal, Munsiff of Diamond Harbour, dated the 21st of April 1887.

(1) 2 Hay, 196; Marsh, 313. (2) 8 Bom., A. C., 31.

D'Silva v. *Raj Coomar Dutt* (1), *Enayetoollah Meah* v. *Nubo Coomar Sircar* (2) and *Reazooddeen Mahomed* v. *McAlpine* (3) followed.

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AKSHAYA KUMAR DUTT v. SHAMA CHARAN PATITANDA.

The rent of a Government Khas Mehal can only be enhanced by the same process as the rent on any private estate.

Quære:—Whether a *jummabundi* is a public document?

THIS was a suit brought by an izarahdar to recover rent from a tenant.

The plaintiff stated that he formerly held an izarah of certain lands under Government; that on the expiration of such izarah, Government held the lands khas, and when so holding took, in the year 1283 (1876-77), a measurement of the said lands, the result of which was (amongst other matters) that the defendant, who was a ryot under Government, and who formerly held a *jumma* of Rs. 780, was found to be holding 1,374 bighas of land, and was assessed according to the *jummabundi* at Rs. 950-2-1, and he therefore entered into a kabuliat in respect of this land at the rate mentioned.

Subsequently to the measurement and *jummabundi* being confirmed by the Board of Revenue, the plaintiff took an izarah of the whole Mehal for twenty years at an annual *jumma* of Rs. 3,000.

The defendant fell into arrears with his rent, and the plaintiff, as his superior landlord, sued him for the same at the enhanced rent settled by the Government in the year 1283.

The defendant denied that the rent had ever been enhanced or that he had ever assented to the *jumma* fixed by the new assessment.

The Munsiff found that the *jummabundi* had been prepared under Regulation VII of 1822, and that it was unnecessary that the defendant should have consented to the *jummabundi*; that the defendant had not, in accordance with s. 10 of Bengal Act VIII of 1879, contested by suit the assessment made by Government; and that, therefore, he was liable to pay the rent recorded against his name in the *jummabundi*.

The defendant appealed to the District Judge, who found that it was not clear whether the settlement by Government was

(1) 16 W. R., 158. (2) 20 W. R., 207. (3) 22 W. R., 540.

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made before or after Bengal Act VIII of 1879 came into force, but that for the purposes of the appeal he assumed the settlement to have been made under Regulation VII of 1822, and held that there was nothing in either Regulation VII of 1822 or in Bengal Act VIII of 1879 or the present Tenancy Act requiring a ryot's assent to the *jumma* imposed, or making it necessary for the zemindar to serve a special notice on him, calling upon him to attend at the settlement; he therefore dismissed the appeal.

The defendant appealed to the High Court.

Baboo *Rash Behari Ghose* and Baboo *Jogesh Chunder Dey* for the appellant.

Baboo *Doorga Mohun Das* and Baboo *Sarut Chunder Roy* for the respondent.

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

In this case the first thing that is important is to ascertain, as accurately as we can, what the facts as found by the lower Appellate Court are to which we have to apply the law. The suit is brought by an izarahdar to recover rent from tenants at an enhanced rate. The case made is that the property on which the tenants hold is a Khas Mehal of Government; that the plaintiff and another formerly held an izarah of the Mehal; that then it fell into the Khas possession of Government, and that in about the year 1876 a fresh settlement was made under which the rent of these tenants was enhanced; that subsequently the plaintiff and another again took an izarah, and the plaintiff alleges his title to sue for and recover rents from the tenants at the enhanced rate.

The District Judge, before whom the case came on appeal, says this:—"The Deputy Collector, Baboo T. C. Mitter, who made the re-settlement on behalf of Government, raised the *jummas* to" so and so. "The *jummabundi* was in due course approved by the Board of Revenue, but it is not clear whether the settlement was before or after Bengal Act VIII of 1879 came into force. I shall, for the purposes of this appeal, assume that the settlement was made under Regulation VII of 1822." Then he describes the present appearance of the *jummabundi*, and he

goes on :—"Now, no doubt, if it were necessary in case of a re-settlement of a Khas Mehal to prove that the tenants assented to pay any enhanced rent assessed on them, or it were necessary to prove that a notice, calling on each tenant to attend at the settlement, must be proved to have been served on each individual tenant, it would be exceedingly difficult in the present case to say that the defendant was bound by the settlement. I am not aware, however, of anything either in the Regulation VII of 1822 or in the Bengal Act VIII of 1879, or the present Tenancy Act, which either requires the ryot's assent to the *jummta* imposed, or makes it necessary to prove that a special notice was served on any individual tenant."

Now, we think, the intention of the District Judge must have been to find this: that if it were necessary, under the circumstances of the case, in order to comply with the law, as it existed before Bengal Act VIII of 1879, or the earlier Bengal Act III of 1878, to show either of two things, either the consent of the tenants to the *jummabundi* as recorded, or a notice of enhancement served upon the tenants, to justify the enhancement, then the case of the plaintiff was not made out, for that there was neither assent established nor notice proved. But the District Judge went on to hold that neither of these conditions need be complied with. Taking that to be the finding of fact, and that to be the proposition of law, we have to say whether the proposition has been correctly laid down; and, it appears to us that it has not been correctly laid down. It has been held in a series of cases that one or other of two things must occur in order to make the enhanced rent stated in a *jummabundi* settled under the Regulation which has been referred to, binding upon a tenant. There must be either an assent to that enhancement, or else there must be a compliance with the provisions of the rent law which was in force at the time, Bengal Act VIII of 1869, with regard to enhancement of rent; because it was long settled law, established by a series of decisions, that the rent of a Government Khas Mehal could only be enhanced by the same process as the rent on any private estate.

With regard to that it is not necessary to refer to more than a few cases. There is the well-known case of *D'Silva* v. *Raj*

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Coomar Dutt (1); the case of *Enayetoollah Meah* v. *Nubo Coomar Sircar* (2); and the case of *Reazooddeen Mahomed* v. *McAlpine* (3).

In the first Court reliance was placed upon the case of *Taru Patur* v. *Abinash Chunder Dutt* (4) as an authority for the contrary proposition; but it appears to us that that case is not really an authority for that for which it has been cited. All that was there decided was that the settlement *jummabundi* is a public document, and is admissible in evidence as such under s. 74 of the Evidence Act. It is evident that the question, whether it is admissible in evidence as a public document, and the question whether that which is in it is binding upon tenants without reference to the question of consent or notice, are entirely separate matters, and it is right to notice that even as to that which was actually decided in that case, *viz.*, that the document was a public document, the question is now open to some degree of doubt, because it has been seriously questioned by the late Chief Justice and Mr. Justice Macpherson in the case of *Ram Chunder Sao* v. *Bunsidhur Naik* (5). The passage occurs in p. 743 of the report.

It appears to us, therefore, that if this matter is to be disposed of under the provisions of the law as it was settled, independently of the Bengal Acts of 1878 and 1879, the decision of the lower Appellate Court cannot be supported.

In the first Court, reliance was placed on Bengal Act VIII of 1879. Now, if there be any section in that Act which makes this *jummabundi* binding upon the tenants in question, it is s. 10, which says :—" Every under-tenant and ryot shall be liable to pay the rent recorded as demandable from him under this Act, unless it shall be proved in any suit instituted by such under-tenant or ryot to contest his liability to pay the same that such rent has not been assessed in accordance with the provisions of this Act." Taking that alone, it could not, we think, affect this case, because it only deals with the rent recorded as demandable under the Act, that is to say, in compliance with the provisions

(1) 16 W. R., 153.
(2) 20 W. R., 207.
(3) 22 W. R., 540.
(4) I. L. R., 4 Calc., 79.
(5) I. L. R., 9 Calc., 741.

of ss. 6 and 9, and those sections can only be complied with, if the settlement is actually made in accordance with the terms of the Act. And practically, therefore, it is hardly possible that a settlement could be made which would be affected by s. 10 unless it were substantially made after those clauses came into operation. But reference has further been made to s. 14, which says: "The provisions of this Act shall apply to all settlement proceedings under Regulation VII of 1822, which may have been confirmed after the commencement of Bengal Act III of 1878, or which may hereafter be confirmed or sanctioned by the Revenue authorities from time to time empowered in that behalf by the Lieutenant-Governor, whether such proceedings shall have been commenced before or after the commencement of the said Act." That, no doubt, makes the Act retrospective in this sense, that the effect of settlement proceedings having been commenced before the passing of the Act of 1878, or the Act now in question, is not fatal to the notion of the Act applying. On the other hand, it only makes the Act retrospective; and the provisions of the Act themselves only apply to settlements made in accordance with the terms of the Act, and they cannot therefore have any application to a case in which it has been found by the lower Courts that the settlement was made about two years before the first of the two Acts came into operation. For these reasons we think that this appeal must succeed. The appeal is against the decision of the lower Appellate Court to this extent that the defendant objects to any rent having been allowed to the plaintiff in excess of the old admitted rate of rent, and in accordance with the enhanced rent. The details of the matter can readily be settled between the parties. The amount deposited by the defendant will be taken into account, and a decree made accordingly. In any event the appellant will have his costs of this appeal.

T. A. P. *Appeal allowed.*