that could be said in this matter, which is of some importance. We agree with the District Judge in the opinion he has expressed regarding the application of sections 15 and 16 of the Bengal Tenancy Act to putni tenures with due regard to section 195 (*e*). In our opinion these provisions apply to putni tenures. It seems to us that the object of section 195 (*e*) is that nothing in the Bengal Tenancy Act should interfere with the putni law in respect of putni tenures, but that in other respects the Bengal Tenancy Act should be held to apply as supplementing the putni law. The appeals are therefore dismissed with costs.

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DURGA PROSAD BUNDOPADHYA *v.* BRINDABUN ROY.

Appeals dismissed.

C. D. P.

PRIVY COUNCIL.

INDUR CHUNDER SINGH AND OTHERS (PLAINTIFFS) *v.* RADHAKISHORE GHOSE (DEFENDANT).

*P.C.** 1892 *March* 5.

[On appeal from the High Court at Calcutta.]

Guardian and Ward—Minor not bound by his guardian's contract—Appeal, complete change of case to that in issue in lower courts not allowable.

Upon the death of an ijáradar, his mother and widow, as managers under his will, remained in possession of the land leased. Subsequently a son was adopted to him by the widow and succeeded to his estate. The lease having expired, a renewal for five years was taken by the managers, but was surrendered before that period elapsed, during the minority of the son, against whom, on his attaining full age, this suit was brought by the lessor to recover three years' rent of the renewed ijára.

The contract of the adoptive mother and guardian was not personally binding upon the adopted son, and had not been ratified by him after attaining full age. It did not purport to deal with the estate to which he afterwards succeeded, but was entered into by the managers in their own names.

Held, that the case, as originally made in the plaint and raised by the issues framed in the court of first instance which covered a wider ground, *viz.*, that the son was personally bound by the contract as being beneficial

* *Present:* LORDS HOBHOUSE, MACNAGHTEN, and HANNEN, and SIR R. COUCH.

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to him, and on the ground that he had ratified it after attaining full age, could not be altered in appeal into what would be a wholly different claim and raise entirely new issues, *viz.*, that the managers, having power under the will, had charged the estate with the rent of the ijára, and that such charge remained upon it in the possession of the heir, who was liable to the extent of the assets received by him. The latter would have been in fact a new suit.

The case that arose in *Hanoomanpersaud Panday* v. *Mussumat Babooee Munraj Koonweree* (1), distinguished.

APPEAL from a decree (10th January 1889) of the High Court, reversing a decree (31st December 1886) of the Subordinate Judge of the Murshidabad district.

The suit out of which this appeal arose was brought by zamindars whom the appellants represented against the respondent in December 1885, he having attained full age in June of that year, to recover Rs. 10,529, arrears of rent (April 1882 to April 1885) for land held under an ijára taken, and also terminated, during the respondent's minority, by the managers of the estate to which he afterwards succeeded.

The suit was brought against two defendants, the first being Radhakishore Ghose, the son whom the second defendant, Nrityashama Dasi, adopted to her deceased husband, Gopimohun Ghose, who died in 1869. The plaint stated that the latter had taken the land in ijára, but had died while it was running; that his widow and her mother, Naraini, who remained in possession as managers, in accordance with his will in 1874, took a renewal for five years at the annual rent of Rs. 3,484; and that the widow in 1885, Naraini being then dead, surrendered the ijára. The defendant Radhakishore answered that he was a minor during all the time of the ijára, which was taken by his adoptive mother and grandmother on their own account, and that his estate was not benefited by it.

The issues raised questions of the benefit to the minor's estate, and of ratification by him on coming of age. They are set forth in their Lordships' judgment, where all the facts are stated.

The Subordinate Judge found that the managers renewed the lease, having authority so to do under the will, for the benefit of the adopted son; but that there was no evidence of subsequent

(1) 6 Moo. I. A., 393.

ratification by him. He dismissed the suit as against Nrityashama, whom he found to have contracted, not on her own account, but for the first defendant. No appeal was filed against the dismissal of the suit as against this defendant.

It was not contended in Radhakishore's appeal to the High Court that a guardian of a minor could bind him personally by a contract, and the Judges (O'KINEALY and TREVELYAN, JJ.) said that he could not. They referred to *Waghela Rajsanji* v. *Shekh Masludin* (1) as an authority, if one were needed, for this. They concurred with the Subordinate Judge in finding that there had been no ratification by the second defendant on his coming of age. But they differed from him as to the supposed authority of his adoptive mother and grandmother to bind the minor by a contract to pay rent for the renewed ijára. They held that he could not be so bound, and they therefore decreed the appeal, dismissing the suit.

The plaintiffs having appealed,

Mr. *T. H. Cowie*, *Q.C.*, and Mr. *W. A. Hunter*, for the appellants, argued that the ijára having been renewed in the course of authorised management of the estate, the renewal by the managers, for the time being, had charged the estate, which afterwards remained charged in the hands of the heir. They referred to the judgment in *Hanoomanpersaud Panday* v. *Mussumat Babooee Munraj Koonweree* (2).

Mr. *R. V. Doyne*, for the respondent, argued that the case now suggested was different from the one originally stated in the plaint, and heard upon the issues fixed. In the first Court the respondent had been sued as personally and directly liable, in consequence of the contract entered into by his adoptive mother and guardian. It was not open to the appellants to change their ground, and make their suit a different one, founded upon a charge on the land to which the respondent had succeeded as heir, that constituting assets in his hands. That there would be answers to this latter case appeared from the evidence, to which reference was made.

Mr. *T. H. Cowie*, *Q.C.*, replied.

(1) I. L. R., 11 Bom. 551; L. R., 14 I. A., 89.
(2) 6 Moo. I. A., 393.

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Their Lordships' judgment was delivered by Lord HANNEN, at the conclusion of the arguments.

LORD HANNEN.—In this suit, which was brought in the Court of the Subordinate Judge of Murshidabad, the plaintiffs claimed arrears of rent in respect of lands orignally hold for a term of years under the plaintiffs or their predecessors in title by one Gopi Mohun Ghose.

Before the expiration of the lease Gopi Mohun Ghose died (February 1869), leaving no issue. By his will (28th January 1869) he gave his wife, Nrityashama Dasi, power to adopt a son, who was to be entitled to all his property, with an exception not material to this case. The will contained the following clause:—"As long as the son begotten of my loins or my adopted son remains a minor and has not attained majority, all the property shall be in the possession of my adorable mother and my wife, as their guardians." In 1870 the widow adopted Radhakishore Ghose, the respondent in this appeal, who only attained his majority on the 9th June 1885.

On the death of Gopi Mohun Ghose, his mother, Naraini Dasi, and his widow continued in possession of the lands claimed during the remainder of the term and after its expiration.

On the 7th September 1874 they took a fresh lease for five years from the Manager of the Court of Wards, then in charge of the plaintiffs' estates. The lessees therein described themselves respectively as "mother of the late Gopi Mohun Ghose" and "mother of the minor adopted son," and they bound themselves to pay the rents reserved, and to pay interest on any arrears.

After the expiration of this term Naraini Dasi and Nrityashama Dasi continued to hold possession, but on the 13th April 1885, two months before the respondent came of age, Naraini Dasi having died, Nrityashama Dasi surrendered the lands, and the appellants accepted the surrender and recovered possession of them. There were at that time three years' arrears of rent, which were sought to be recovered in this action against the respondent personally, and also against his adoptive mother, Nrityashama Dasi.

The Subordinate Judge dismissed the suit as against Nrityashama Dasi, and against this decision no appeal has been brought.

but he held that the present respondent was liable for the arrears of rent with interest and costs of suit.

The issues raised were as follows:—"Was the ijára by Naraini and Nrityashama Dasi contracted for the benefit of defendant No. 1? Was it beneficial to him? Did defendant No. 2 take the lease in the *bonâ fide* belief that it would be beneficial to him? Is he bound by their acts, and liable for the rent, cesses, and interest claimed?"

The Subordinate Judge decided all these issues in the affirmative, that is, against the present respondent.

Another question was discussed, though not raised on the pleadings, namely, whether the respondent, after he attained his majority, ratified or adopted the acts of his adoptive mother and grandmother? The Subordinate Judge held that the respondent had not adopted or ratified these acts. It was, in fact, proved that the respondent, on coming of age, repudiated the act of his guardians, and refused to collect rents from the sub-tenants.

On appeal to the High Court the learned Counsel for the plaintiffs did not contend that the guardian of the minor could bind the minor by contract, but argued that the learned Judge was wrong in not finding that the respondent had, after he came of age, adopted the contract. On this point the High Court agreed with the Subordinate Judge, and this question of fact must be treated as finally determined.

The contention that the mother and widow of Gopi Mohun Ghose had power to bind the minor by contract was abandoned in the Court below, and their Lordships are of opinion that such a contention could not be sustained.

But it was suggested that, under the terms of the will of Gopi Mohun Ghose, his mother and widow had power to bind his estate, and had done so, and that the respondent, having succeeded to that estate, is bound by the act of his adoptive mother and grandmother as his guardians, done in the *bonâ fide* belief that it was beneficial to the estate.

Their Lordships are of opinion that this is not the claim made by the plaintiffs' plaint. It does not make any claim against the estate, but makes a personal claim against Nrityashama Dasi, and the

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respondent whom it states she had adopted. While a liberal construction should be given to pleadings, so as to give effect to their meaning to be collected from their whole tenour, they ought to be expressed with sufficient definiteness to enable the opposite party to understand the case he is called upon to meet, and their Lordships consider that neither in the plaint, nor in the issues which cover a wider ground than the plaint, is the claim made against the estate of the deceased Gopi Mohun Ghose. Indeed, if it was, and was sustained in that sense by the Subordinate Judge, it is difficult to see why the suit should have been dismissed against the widow and guardian. It is indeed now urged that the suit may be treated as a claim against the estate and against the heir, to the extent of assets received by him. But there is quite enough in the evidence to show that a claim so put would raise entirely new issues, both as to the extent of assets received and as to the extent to which the plaintiffs themselves were responsible for the renewal of the lease; that it would, in fact, be a new suit, and that it would be improper to allow such a change of case at this period of the litigation.

But, further, their Lordships are of opinion that upon the facts proved, the suit, even if treated as one againt the respondent in regard to the estate, cannot be sustained.

The kabulyat executed by the mother and widow of Gopi Mohun Ghose, on which the plaintiffs' claim is founded, does not purport to bind the estate of the deceased. By it the lessees undertake themselves to pay the rents and interest on any arrears, and to observe the obligations of the lease. The learned Subordinate Judge, while admitting that there is nothing in the lease to show that it was taken for the benefit of the respondent, says that that fact is immaterial when it is proved that the lease was really taken for the respondent, and that the lessees were in possession for his benefit; and he relies on the case of *Hanoomanpersaud Panday* v. *Mussumat Babooee Munraj Koonweree* (1) as an authority. In that case, however, the managers of an infant's estate were actually dealing by way of mortgage with a portion of that estate, and it was held that the manager might do so in a case of need or for the benefit of the estate, and that the

(1) 6 Moo. I. A., 393.

fact that the mortgage contained the inaccurate statement, that the mortgagor had a beneficial proprietary right, was immaterial. But in the present case the mother and widow of Gopi Mohun Ghose were not dealing with, and did not purport to deal with or affect his estate, but were incurring new obligations which it is now sought to transfer from them to the estate. It may be that, as between them and the infant, they might be able, in some circumstances, to show that the estate ought to bear the burden they had taken upon themselves, but that is not the question raised in this case, in which the plaintiffs seek to establish a direct relation between themselves and the estate of the infant, and a liability on the part of the infant now that he is of age, and of his estate, to fulfil the obligations entered into by the lessees in their own name.

Their Lordships are of opinion that this contention cannot be supported, and that the judgment appealed from, reversing that of the Subordinate Judge, should be affirmed with costs, and they will humbly advise Her Majesty accordingly.

Appeal dismissed.

Solicitors for the appellants: Messrs. *Barrow* and *Rogers*.

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.

SURENDRO KESHUB ROY (PLAINTIFF) *v.* DOORGASOONDERY DOSSEE AND ANOTHER (DEFENDANTS).

[On appeal from the High Court at Calcutta.]

P.C. * 1891 *March* 6, 7, 11, 12, 1892 *February* 6.

Hindu law, Adoption—Adoptions by each of two widows ineffectual where simultaneously made to one father—Ikrarnama between widows in favour of the boys whose adoption failed, Effect of—Bequest to a family Thakur—Office of shebait—Account—Contract—Rights of persons interested in a contract, though not formal parties.

By Hindu law there cannot be simultaneous adoptions by two widows of two sons to one father.

A testator bequeathed all his property to a family thakur; and, to secure the *Sebsheba*, directed that his two widows should each adopt a son to him, the sons to become *shebaits* of the property dedicated, of which

* *Present:* LORDS WATSON, HOBHOUSE, and MORRIS, and SIR R. COUCH.