

Before Mr. Justice Macpherson and Mr. Justice Hill.

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March 24. JUGGUT CHUNDER CHOWDERY (PETITIONER) v. GOLACK CHUNDER  
GHOSE AND OTHERS (OPPOSITE PARTIES.)<sup>\*</sup>

*Bengal Tenancy Act (VIII of 1885), section 95—Appointment of common manager—Consent of parties—Land under izara—Expiry of izara—Rights of holder of subsequent putni lease of lands formerly under izara—Civil Procedure Code (Act XIV of 1882), section 622.*

A common manager of lands was appointed under section 95 of the Bengal Tenancy Act, with the consent of the co-owners. The owner of a 3 annas share of the lands had let out in *izara* his share to the other co-owners. After the expiry of the *izara*, and during the continuance of the management by the common manager, the owner of the 3-annas share granted a *putni* thereof to A, who attempted to collect the rents payable to him as *putnidar*.

*Held*, that A was bound by the order appointing the common manager, and could not himself collect such rents, as he was in no better position than the shareholder from whom he obtained his *putni*.

*Ganodu Kanta Roy v. Prohabati Dasi* (1), distinguished.

ON the 9th January 1892 the owners of a 5 annas share in certain lands within the district of Pubna applied to the District Judge for the appointment, under sections 93 and 95 of the Bengal Tenancy Act, of a common manager of the lands of which they were part-owners. The District Judge on the 25th January 1892 directed notice to be served on the owners of the remaining 11 annas of the lands to show cause why they should not appoint a common manager. One of the co-owners, named Bhabani Nath Rai, who hold a 3 annas share of the lands, which he had let out in *izara* to his co-sharers, filed a petition on the 29th February 1892, objecting to the appointment, except as to those lands of which he was in *khas* possession. This petition he subsequently withdrew; and in the result no cause was shown. On the 2nd March 1892 the District Judge made an order that the petitions of the owners of the 5 annas share of the lands should be kept on the record, and that the case should stand over, as there was some suggestion of a compromise. On the 18th March 1892 the District Judge made an order

<sup>\*</sup> Civil Rule No. 113 of 1896, against the order of Kedar Nath Roy, Esq., District Judge of Pubna, dated the 22nd October 1895.

appointing Golack Chunder Ghose common manager of the whole of the lands. Subsequently the term of the *izara* granted by Bhabani Nath Rai expired; and thereafter, that is to say, in October 1894, Bhabani Nath Rai granted to the petitioner a *putni* of the lands formerly held in *izara*, and the petitioner began to collect the rents payable to him as *putnidar*. The manager reported this fact to the Judge, who, after hearing the petitioner, ruled, on the 22nd October 1895, that the petitioner could not be allowed to interfere with the management of the property. The petitioner then moved the High Court under section 622 of the Code of Civil Procedure, and obtained a rule calling upon the opposite parties to show cause why the District Judge's order should not be set aside.

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Babu *Srinath Dass* (with him *Babu Grija Sanker Mozumdar*) showed cause.—The petitioner is a mere transferee of the interest of Bhabani Nath Rai, and cannot take directly from the manager possession of his *putni* lands. The manager was appointed not by consent merely, but by the order of the Court; and it is this that distinguishes the case from the case of *Gonoda Kanta Roy v. Prohabati Dasi* (1), where the appointment was made without the formalities required in sections 93 and 94 of the Bengal Tenancy Act. In the present case what was consented to was not the appointment, but the nomination of the manager; and the procedure prescribed by the Act was duly followed.

Babu *Nogendro Nath Mitter* (with him *Babu Lal Mohun Dass*) in support of the rule.—The order appointing the manager was made by consent of parties. The requirements of section 93 of the Act were not complied with, for the District Judge ought only to have acted upon evidence showing a dispute threatening either inconvenience to the public or injury to private rights; but no such evidence was offered. The order, therefore, was made without jurisdiction, and does not bind the petitioner. Such an order ought not to be made on the mere wish of the co-owners, but should be made only after strict compliance with the requirements of the Act—*Gonoda Kanta Roy v. Prohabati Dasi* (1)

(1) I. L. R., 20 Calc., 881.

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The judgment of the Court (MACPHERSON and HILL, JJ.)

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was as follows :—

It is argued that the appointment of the manager having been made by the consent of parties and without the observance of the procedure prescribed in sections 93 and 95 of the Bengal Tenancy Act, the appointment was not really made by the District Judge under section 95, but derived its validity solely from the consent of the parties, and continued only so long as the state of things under which the consent was given existed; consequently, that the petitioner was not bound by the order appointing the manager; and that the order of the Judge, which in effect, continued the management and authorized the manager to collect the rent realisable by the petitioner in respect of this *putni* interest, was wrong and without jurisdiction.

We see no force in these contentions. It is clear that there was a proper application to the District Judge under section 93 by some of the co-owners for the appointment of a common manager, and that notice was served on all the co-owners to show cause why a common manager should not be appointed. In the result no cause was shown, but the District Judge, instead of making an order under section 94, directing the owners to appoint a common manager, gave them time in order that they might come to some arrangement. Eventually, they agreed to the appointment of Golack Chunder Ghose, and the Judge made a formal order under section 95 appointing him as manager. It appears that at that time the share of Bhabani Nath Rai, one of the co-owners, was let out in *izara* to some of the other owners. Bhabani Nath Rai at first objected to the appointment of a manager, but afterwards withdrew the objection, and said he would agree to the appointment of a common manager as regards the property, which was in his *khas* possession as proprietor, but that he was not in any way concerned with the appointment of the manager as regards the property which was let out in *izara*, this not being in his *khas* possession. The manager was appointed in March 1892, and assumed the management of the entire properties, collecting all the rent due to the co-owners, either in their proprietary or *izamadari* right. After the *izara* given by Bhabani Nath Rai had come to an end some time in 1894, he gave a *putni* lease of his

3 annas share to the petitioner, who then began to collect or to attempt to collect the rent due to him as *putnidar*. This led to a representation by the manager; and the District Judge, after hearing the objections of the petitioner, ruled that he could not be allowed personally to collect his 3 annas share of the rent as *putnidar*, and that there was no ground for disturbing the common management of the manager, which had been going on since 1892. The petitioner then obtained a rule to show cause why this order should not be set aside on the grounds already stated.

It would, no doubt, have been better if the Judge had, under section 94, made an order directing the parties to appoint a common manager; but his omission to do that does not, we think, in any way invalidate the order or diminish the scope of it. The manager was not a manager appointed by the parties, but by the District Judge; although, no doubt, the parties agreed to the appointment of the particular person selected; and in pursuance of that order the manager assumed and has retained up to the present time the management of the properties. It could not, we think, be contended with any success that Bhabani Nath Rai could, so long as that order was in force, himself collect the rent payable on account of this 3 annas share; and, if he could not do that, the person who has derived title from him as *putnidar* is not in any better position. He took a *putni*, as the Judge remarks, knowing that the property was under the charge of a common manager appointed by an order of the Court, an order which under clause (3) of section 98 would have the effect of preventing any of the co-owners from themselves realising the rents due to their respective shares. If we were to hold that a person taking a lease of the share of one of the co-owners after the appointment of a common manager could realise his own share of the rent, we should hold in effect that it would be open to any co-owner to defeat at his pleasure the sole object for which a manager is appointed. This case, we think, is quite distinguishable from the case of *Ganoda Kanta Roy v. Proshabati Dasi* (1), which was cited as an authority for the petitioner's contention. In that case the parties, while objecting to the appointment of a common manager, agreed that the property should be made over to the

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Court of Wards. Under an order of the Judge it was made over to the Court of Wards, which assumed the management and continued it for some time, but afterwards gave it up. The Judge then, without taking any further proceedings under section 93, proceeded to appoint a common manager. This Court held that he had no authority to do that, as the consent under which the Court of Wards took charge was limited to the Court of Wards, and did not give the Judge power to appoint any other manager. Here the manager appointed by the Judge with the consent of the parties is still the manager. We see no reason to interfere with the order of the District Judge, and discharge this rule with costs.

H. W.

*Rule discharged.*

*Before Mr. Justice Banerjee and Mr. Justice Gordon.*

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January 3.

BALARAM BHARAMARATAR RAY (CLAIMANT, FIRST PARTY,  
PETITIONER) v. SHAM SUNDER NARENDRA (CLAIMANT, SECOND  
PARTY, OPPOSITE PARTY.) \*

*Land Acquisition Act (X of 1870) and (I of 1894)—Award—Order for apportionment—Appeal—Act I of 1894, sections 11, 18, 26, 53 and 54—Limitation Act (XV of 1877), section 5—Sufficient cause.*

The term "award" used in section 54, Act I of 1894, includes an order for the apportionment of compensation made under section 30, and an appeal from such order of apportionment lies to the High Court.

An appellant having preferred an appeal to the Court of the District Judge and *bona fide* prosecuted it, it being doubtful whether the appeal lay to the District Judge or to the High Court, is entitled to a deduction of the time during which the appeal was pending in the Court of the District Judge.

*Bulwant Singh v. Gumani* (1), followed.

THIS rule relates to certain apportionment cases under the Land Acquisition Act (X of 1870). The reference was made by the Collector on the 30th December 1893, under clause 1, section 15, as no claimant had attended. When the case was heard by the Subordinate Judge on the 12th January 1895, Act I of 1894 had come into force, and he made an order for apportion-

\* Rule No. 1383 of 1895, against an order of Mr. F. E. Pargiter, District Judge of Cuttack, dated the 24th April 1895, respecting an appeal from the decree of the Subordinate Judge of Cuttack, dated the 12th January 1895.