

Before Mr. Justice Pigot and Mr. Justice Banerjee.

BINDU BASHINI DASI (PLAINTIFF) v. PEARI MOHUN BOSE
AND OTHERS (DEFENDANTS).*

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September 1.

*Co-sharers—Suit by co-sharers with respect to joint property—Parties—
Plaintiffs—Suit for adjustment of proportionate share of rent by one
co-sharer—Landlord and tenant—Lease, construction of.*

A lease of certain land of which the plaintiff was a fractional co-sharer provided as follows:—"After the land in question is fully brought under cultivation you shall pay rent without default, according to kists year after year, as per measurement and *jamabandi* at the said rate of Company's 10 annas 10 gundas for the quantity of land that will be left after deducting beds of khals, pasture lands, lands unfit for cultivation, places of worship, hajats, *pujai basha batis*, and your remuneration for reclamation, upon measurement of all the lands by the standard rod used in the *abads* of the said *talug*. On no account shall any larger amount be demanded." In a suit instituted when the land had been fully brought under cultivation, and after measurement, the plaintiff claimed only her own share of the rent and her co-sharers did not join her as co-plaintiffs, nor were they made defendants.

Hold, that the suit was not maintainable. What the lease contemplated under the circumstances which had arisen was a final adjustment of the rent, and such an adjustment could be obtained only by a suit brought by all the co-sharers or by some of them if the others refused to join, but in that case the suit must be for the adjustment of the entire rent, and all the necessary parties must be properly before the Court.

This was a suit to recover arrears of rent for the years 1291 and 1292 at an enhanced rate in respect of certain *dur ganti jama* in ohuk Tengramari. The plaintiff, Bindu Bashini Dasi, was the owner of 4 annas of the *ganti jama*, and the *pro forma* defendants were the owners of the other 12 annas. The tenant defendants held the *dur ganti jama* under a lease which, *inter alia*, provided as follows:—

"We hereby grant you a *mourasi abadi kaimi* lease of an estimated quantity of (1,001) one thousand and one bighas of land, reclaimed and unreclaimed, comprised within these boundaries. The land in question being fallow, you shall hold it rent-free for three paddy seasons, that is,

* Appeal from Appellate Decree No. 986 of 1890, against the decree of Babu Krishna Mohun Mookherjee, Subordinate Judge of Khulna, dated the 24th of April 1890, affirming the decree of Babu Norendra Krishna Dutt, Munsiff of Bagirhat, dated the 17th of June 1889.

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for four years. After expiry of the rent-free period, you shall pay rent according to *kists* every year, at the rate of four annas per bigha for the first year, at the rate of six annas per bigha for the second year, at the rate of eight annas per bigha for the third year, and for the fourth year at the full rate of Company's ten annas ten gundas, including costs, &c., per bigha per annum. You shall be allowed remuneration for reclamation at the rate of five bighas per cent. For the land that you will cultivate in any particular year, you shall pay rent, as per terms of this *potta*, according to the result of the local enquiry. After the land in question is fully brought under cultivation you shall pay rent without default, according to *kist*, year after year, as per measurement and *jamabandi* at the said rate of Company's 10 annas 10 gundas for the quantity of land that will be left after deducting beds of *khals*, pasture land, lands unfit for cultivation, places of worship, *hajats*, *pujai basha batis*, and your remuneration for reclamation, upon measurement of all the land by the standard rod used in the *abads* of the said *talug*. On no account shall any larger amount be demanded. You shall raise no objection on the score of drought or diluvion or death or desertion. You will take the present, &c., that may be given by tenants whom you will settle upon the *abad* in question. You yourself shall close *khals* and excavation in the land. Rent shall be adjusted upon measurement of the land in question."

The plaintiff, Bindu Bashini Dasi, alleged that the land in question was, in terms of the above lease, fully brought under cultivation, and on measurement it was found to contain 1,491 bighas 2 cottas and 6 chittaks, and after allowing 5 per cent. deductions, only 1,337 bighas 14 chittaks were liable to assessment at 10 annas and 10 gundas per bigha. She therefore sought to recover enhanced rent of Rs. 1,000 on account of her 4-annas share for increased area in the *dur ganti jama* as found upon measurement.

No reason was shown why the other shareholders did not join in the suit as co-plaintiffs.

The tenant defendants Nos. 1 and 4 and the *pro forma* defendants Nos. 5 and 19 entered appearance and contended that the plaintiff, being only one of several shareholders in a joint undivided *ganti jama*, could not sue alone for enhancement of a fractional share of the rent due under the lease.

The Munsiff, relying on the decisions in the cases of *Doorga Proshad Mytee v. Joy Narain Hazra* (1) and *Kali Chunder Singh v. Rajkishen Bhadra* (2), held that the suit as framed was not maintainable and dismissed it. The plaintiff appealed. The

1) I. L. R., 4 Calc., 96.

(2) I. L. R., 11 Calc., 615.

material portion of the judgment of the Subordinate Judge was as follows :—

“It was pressed before me on appeal that, properly speaking, it was not a suit for enhancement of rent under the rent law ; the plaintiff is simply asking for what is due to her in terms of the contract between the parties, and as such the rulings cited by the Court below do not apply. I am of opinion that this is evidently a suit under section 7 of the Tenancy Act. There has been no separate contract as between the tenant defendants. The contract was between the tenant defendants and all the *guntidars* jointly. In this state of things the plaintiff should have alleged and proved why her co-sharers do not join her. She should have also laid the whole claim to prevent a multiplicity of law suits. In the absence of these elements in the plaint, I am constrained to hold that the suit has not been properly framed, and the Court below has been perfectly justified in throwing it out.

“The appellants’ pleader cited the case of *Nistarini Dasi v. Bonomali Chatterjee* (1) in support of his contention. It appears to be a Full Bench ruling, in which it was held that ‘when a potta in its terms expressly stipulates for an increase of rental according as the lands let are brought under cultivation and a measurement taken, a landlord is entitled to recover such increased rent as agreed upon in the potta, without serving on the tenant any notice under section 14 of Act VIII of 1869.’ The question now before the Court was neither raised nor considered in that case.

“It has been held by a prior Full Bench case of *Doorga Proshad Mytee v. Joy Narain Hazra* (2) that one co-sharer cannot enhance the rent of his share, such an enhancement being inconsistent with the continuance of the lease of the entire tenure. The case of *Kali Chandra Singh v. Rajkishore Bhuddro* (3) is an improvement on the Full Bench ruling to answer the requirements in cases where the co-sharers do not join, being under the influence of the tenants. As the plaint has not been laid according to those rulings, I see no valid reason to interfere. The appeal is dismissed with costs.”

The plaintiff appealed to the High Court.

Dr. *Rash Behari Ghose* and Baboo *Jogesh Chunder Roy* for the appellants.

Baboo *Mohendro Nath Roy* for the respondents.

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

The question raised in this appeal is whether the plaintiff, who is a fractional co-sharer in the superior tenure, is entitled to

(1) I. L. R., 4 Calc., 941.

(2) I. L. R., 4 Calc., 96.

(3) I. L. R., 11 Calc., 615.

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maintain this suit for rent in respect of her share under the terms of the lease by which the tenancy was created.

The lease provides as follows:—

“After the land in question is fully brought under cultivation you shall pay rent without default, according to kists, year after year, as per measurement and *jamabandi*, at the said rate of Company's 10 annas and 10 gundas for the quantity of land that will be left after deducting beds of khals, pasture lands, lands unfit for cultivation, places of worship, hajats, *pujai basha batis*, and your remuneration for reclamation upon measurement of all the lands by the standard rod used in the *abads* of the said *talug*. On no account shall any larger amount be demanded.”

This shows that after the land in question is fully brought under cultivation there shall be a measurement and an adjustment of the rent after allowing certain deductions, finally and once for all; and after that there shall be no further change in the rent. The plaintiff's case evidently is that that state of things has arisen, namely, that the land has been fully brought under cultivation and there has been a measurement, and the plaintiff, the time for the final adjustment having now arrived or being now passed, asks for an adjustment of the rent. But her co-sharers have not joined her as plaintiffs, and she asks for adjustment of rent in respect of her share only. The adjusting of rent claimed in this suit cannot therefore be the final adjustment contemplated by the lease, as the plaintiff's co-sharers might hereafter bring a suit and succeed in obtaining a different adjustment if separate suits are allowed. It is not necessary to consider whether this is, as has been held by the lower Appellate Court, a suit under section 7 of the Bengal Tenancy Act. We think that under the terms of the lease the final adjustment of rent therein contemplated can be obtained only by a suit brought by all the landlords, or by a suit by some of them if the others refuse to join, but in that case the suit must be for the adjustment of the entire rent, and all the necessary parties must be properly before the Court. For the above reason we think the suit has been properly dismissed, and we dismiss this appeal with costs.

Appeal dismissed.