APPELLATE CIVIL.

Before Coutts and Das, J.J.

MAHARAJA KESHO PRASAD SINGH

v.

RAMDENI SINGH.*

1922.

July, 27.

Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *sections* 52(1)(b), 188 *and* 3(5)—*suit by co-sharer landlord for his share of the rent—claim by tenants for abatement of rent, whether maintainable.*

In a suit for his share of the rent by a co-sharer landlord who, under an arrangement between himself, his co-sharers and the tenants, is entitled to collect his share of the rent separately, the tenants are entitled to apply for a reduction of rent.

Barhamdayal Singh v. *Maharaja Kesho Prasad Singh*(1), dissented from.

Bhoopendra Narain Dutt v. *Romon Krishna Dutt*(2), *Khettermani Dasi* v. *Jiban Krishna Kundoo*(3), *Gopal Chunder Das* v. *Umesh Narain Chowdhury*(4). *Guni Mahomed* v. *Moran and Durga Prosad Myse* v. *Joynarain Hazra*(5), *Baja Promodanath Roy* v. *Raja Ramoni Kant Roy*(6), *Shyama Charan Bhattacharya* v. *Akhoy Kumar Mitter*(7) and *Akshoy Kumar Mitra* v. *Gopal Kamini Debi*(8), referred to.

A suit by a co-sharer landlord for that which is payable to him by a tenant on account of the use and occupation of his share of the land is not a suit for rent as defined in section 3(5) of Bengal Tenancy Act and is not a suit which is contemplated by the Act.

---

*Appeal from Appellate Decrees Nos. 928 and 929 of 1920, from a decision of Ananta Nath Mitra, Esq., Additional District Judge of Shahabad, dated the 28th April, 1920, reversing a decision of Babu Naresh Chandra Rai, Munsif of Shahabad, dated the 26th July, 1919.

(1) (S. A. No. 2797 of 1915, unreported).
(2) (1900) I. L. R. 27 Cal. 417, F.B.
(3) (1915) 21 Cal. L. J. 315.
(4) (1890) I. L. R. 17 Cal. 695.
(5) (1879) I. L. R. 4 Cal. 96, F.B.
(6) (1904-05) 9 Cal. W. N. 34.
(7) (1905-06), 10 Cal. W. N. 787
(8) (1906) I. L. R. 33 Cal. 1010.

1922.

MAHARAJA KESHO PRASAD SINGH v. RAMDENI SINGH.

A decree passed in such a suit is not a decree under the Bengal Tenancy Act and must, therefore, be executed under the Code of Civil Procedure and not under the Act.

This appeal arose out of a rent suit brought by a co-sharer landlord who, under an arrangement between himself, his co-sharer landlord and the tenants, was entitled to collect his share of the rent separately. The defendants pleaded that there was a deficiency in the area of their holding as compared with the area for which rent had been previously paid by them and they claimed a reduction of rent proportionate to the alleged deficiency.

The trial Court found that there was a deficiency in the area of the holding but held that a claim for reduction of rent could not be made in a suit to which all the landlords and tenants were not parties. The lower appellate Court gave the defendants a decree for abatement of rent.

The landlord appealed to the High Court.

The following sections of the Bengal Tenancy Act, 1885, are referred to in the judgment of Das, J.:

S. 3(5). "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant:

in sections 53 to 68 both inclusive, sections 72 to 75, both inclusive, Chapter XII, (Chapter XIV) and Schedule III of this Act; "rent" includes also money recoverable under any enactment for the time being in force as if it was rent;

S. 52 (1). Every tenant shall—

(a) * * * * * * * * * *

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

S. 188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Kulwant Sahay and *Nirsu Narayan Sinha*, for the appellant.

Kailas Pati, for the respondents.

DAS, J.—These appeals arise out of suits for rent by a co-sharer landlord who, under an arrangement between himself, his co-sharer landlord and the tenants, is entitled to make separate collection of his share of rent. The defendants in their written statement claimed an abatement of rent under section 52 (*1*) (*b*) of the Bengal Tenancy Act. The Courts below have concurrently found that there is a deficiency in the area of the holding of the defendants as compared with the area for which rent has been previously paid by them. The Court of first instance being of opinion that a claim for abatement could not be put forward in a suit in which all the landlords and all the tenants are not parties, refused to give effect to the plea. The lower appellate Court has taken a different view and has given the defendants a decree for abatement of rent.

In this Court it was urged by Mr. *Kulwant Sahay* on behalf of the appellant-landlord that the view of the learned Judge in the Court below is erroneous and that he was conclusively bound by a decision of this Court in the case of *Barhamdayal Singh* v. *Maharaja Kesho Prasad Singh* (1). The decision referred to undoubtedly supports the argument of Mr. *Kulwant Sahay*. That decision is, however, a decision of a single Judge; and though it is entitled to great weight, it is necessary for us to examine the principle upon which that decision rests. The view of the learned Judge in the case cited is this; that a claim under section 52 of the Bengal Tenancy Act is subject to the limitation imposed by the Legislature in section 188 of that Act, and that the claim cannot be given effect to except in a properly constituted suit between all the landlords and all the tenants. The arguments

(1) S. A. 2797 of 1915.

1922.

MAHARAJA KESHO PRASAD SINGH v. RAMDENI SINGH.

DAS, J.

employed by the learned Judge receive considerable support from certain observations made by the learned Judges in *Bhoopendra Narain Dutt* v. *Romon Krishna Dutt* (1), but are negatived by the decision in *Khettermani Dasi* v. *Jiban Krishna Kundoo* (2). The decision in the last mentioned case, however, is confessedly based on the decision in the first mentioned case; and in so far as it clearly misstated the rule laid down in *Bhoopendra Narain Dutt* v. *Romon Krishna Dutt* (1), it can scarcely be regarded as an authority of much force.

Section 52 (*1*) (*b*) of the Bengal Tenancy Act provides that every tenant shall be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area. It is not disputed that all the circumstances are present in this case entitling the tenants to claim an abatement of rent under section 52 (*1*) (*b*) of the Act; but it is urged before us that section 188 of the Act effectively prevents the tenants in this case from claiming the benefit of section 52 (*1*) (*b*) of the Act. Section 188, upon which reliance is placed by Mr. *Kulwant Sahay*, provides that where two or more persons are joint landlords, anything which the landlord is under the Bengal Tenancy Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them. It will be noticed that section 188 applies to joint landlords and applies only where the landlord is required or authorized by the Bengal Tenancy Act to do something. The section has no direct application to the tenants; and it certainly does

(1) (1900) I. L. R. 27 Cal. 417, F.B. (2) (1915) 21 Cal. L. J. 315.

not touch the question whether the tenants being authorized to claim a right as against the landlords and, (as in this case) acting together can put forward that claim in a suit by a co-sharer landlord. The principle that underlies section 188 is this: that where two or more persons have a joint right, they cannot assert that right except jointly. But here the defendants are the only tenants of the holdings in respect of which these suits have been brought, and they are certainly acting together in putting forward their claim for abatement of rent in these suits. Even if section 188 were to apply to a case of tenants asking for abatement of rent, a proposition to which, as at present advised, I do not assent, I can see nothing in its operation which would prevent joint tenants from putting forward a claim for abatement of rent in a suit against them by a co-sharer landlord. Section 52(*1*)(*b*) is expressed in the widest terms; and, in my view, we cannot take away or add to the express provision of the Legislature by having recourse to an alleged principle on which section 188 is said to rest.

I have now to consider the cases which were cited before us. In the case of *Gopal Chunder Das* v. *Umesh Narain Chowdhury* (1) the Calcutta High Court held that having regard to the provisions of section 188 of the Bengal Tenancy Act, 1885, where two or more persons are joint proprietors, they must all join in a suit for enhancement of rent under section 30 of the Bengal Tenancy Act or for additional rent under section 52 (*1*) (*a*) of that Act. So far as a suit under section 30 is concerned, it is clearly a suit which the landlord is authorized by the Bengal Tenancy Act to bring. That being so, section 188 must be read as imported into section 30 with the result that a suit for enhancement of rent by a co-sharer landlord would be barred under the provisions of section 188 of the Act. A suit for additional rent by a co-sharer landlord stands on a somewhat different footing. Section 52

(1) (1890) I. L. R. 17 Cal. 698.

1922.

MAHARAJA KESHO PRASAD SINGH v. RAMDENI SINGH.

DAS, J.

differs from section 30 in so far as section 52 declares the liability of the tenant to pay additional rent, but does not expressly authorize the landlord to bring a suit or import the provisions of section 188. The learned Judges, however, took the view that the same principle applies alike to a claim for enhanced rent and to a claim for additional rent. This decision, in no way, throws any light on the case before us.

The next case is that of *Bhoopendra Narain Dutt* v. *Romon Krishna Dutt* (1). The question raised in that case was whether in a suit for rent brought by some of the several joint landlords against one of several joint tenants for recovery of the plaintiff's share of the rent payable on account of the defendant-tenants' share of the tenure under a previous arrangement, the tenant-defendant could claim abatement under the provisions of section 52 (*1*) (*b*) of the Bengal Tenancy Act. The learned Judges answered the question in the negative. So far as the actual decision is concerned, it is undoubtedly right; but in deciding the case Sir Francis Maclean expressed the opinion that the principle underlying section 188 applies to the converse case of a co-sharer tenant claiming the benefit of section 52 in a suit such as that which that learned Judge was considering, and that a relief under section 52 could not be granted except in a suit between all the co-sharer landlords and all the co-sharer tenants. In my opinion, it was not necessary to have recourse to section 188 for the purpose of deciding the case: it was sufficient to say, as the learned Judges did say, that the expression "tenant" in section 52 did not include the case of a mere co-sharer tenant who had only a fractional share in the tenure; but that it meant the tenant of the tenure, not one of many tenants. The only principle which underlies section 188 of the Act is that where two or more persons have a joint right between them, they cannot assert it except jointly. That principle is recognized in section 52 of

(1) (1900) I. L. R. 27 Cal. 417, F.B.

the Act and I quite accept that if two or more co-sharer tenants have a joint right for abatement of rent, they can only assert that right in a suit to which all the tenants are parties. In the case before us all the tenants are parties to the suit and the actual decision in the case cited does not prevent them from asserting that right as against a co-sharer landlord.

The last case to which I need refer is that of *Khettermani Dasi* v. *Jiban Krishna Kundoo* (1). The learned Judges in that case held that section 188 has no reference to joint tenants and cannot apply by analogy to a co-sharer tenant who brings a suit authorized by the Act; *e.g.*, a suit for abatement of rent. As I have said before, section 188 need not be imported into section 52 of the Act; for the expression "tenant" in section 52 must mean the tenant of the holding and not one of the tenants of the holding. The decision is also open to the objection that it is expressly based on the decision last discussed which undoubtedly lays down a contrary proposition.

These are all the cases which were cited before us. Except the decision of this Court, to which I have referred there is no decision which expressly decides that it is not open to the tenants of a holding in a suit by a co-sharer landlord to claim abatement of rent. The section is in very wide terms and there is nothing in section 188 to control it. In my opinion the defendants are entitled to claim an abatement of rent in the suit brought against them by the co-sharer landlord.

The case may be put in another way. A co-sharer landlord has no absolute right to maintain a suit for his share of rent. He may be allowed to bring such a suit under an arrangement between all the landlords and all the tenants; but that arrangement must be consistent with the continuance of the original lease of the entire holding [see *Guni Mahomed* v. *Moran*

(1) (1915) 21 Cal. L. J. 315.

1922.

MAHARAJA KESHO PRASAD SINGH v. RAMDENI SINGH.

DAS, J.

and Doorga Proshad Myse v. *Joynarain Hazra* (1)]. It has been held that though the co-sharer landlords may have the right under such an arrangement to collect their portion of the rent separately, there is nothing to prevent them from reverting to their original condition if they are all agreed, and that a suit brought by all the co-sharers for the recovery of the entire rent is maintainable [see *Raja Promodanath Roy* v. *Raja Ramoni Kant Roy* (2) and *Shyama Charan Bhattacharya* v. *Akhoy Kumar Mitter* (3)]. In the last mentioned case Pratt, J., came to the conclusion that an arrangement for separate collection of rents is an arrangement for mutual convenience and cannot bind the parties for all time; but may be put an end to by the tenants or by the landlords collectively, though not by one of the landlords against the consent of the others. All these cases were reviewed by Rampini and Woodroffe, J.J., in *Akshoy Kumar Mitra* v. *Gopal Kamini Debi* (4). The learned Judges approved of all the decisions to which I have referred and came to the conclusion that there is nothing to prevent the co-sharer landlords at any time from putting an end to the arrangement under which they have been collecting their rents separately. If that be so, it is equally open to the tenant to put an end to the arrangement and to refuse to pay rent separately to the landlords. The tenant may, at any time, take up the position that circumstances have arisen which would make it impossible for him to pay his rent separately to the landlords; and the circumstances of the present case are certainly such as would entitle the tenant to take up that position. Section 52 (*1*) (*b*) of the Bengal Tenancy Act gives the tenants a right to claim abatement for rent under certain circumstances. The case for the landlord is that though all the circumstances exist which would entitle the tenant to claim abatement of rent, still he cannot do so having regard to the fact that the suit is by a co-sharer landlord and not by the

(1) (1879) I. L. R. 4 Cal. 96, F.B.
(2) (1904-05) 9 Cal. W. N. 34.
(3) (1905-06) 10 Cal. W. N. 787.
(4) (1906) I. L. R. 33 Cal. 1010.

whole body of landlords. The tenants may retort by saying: "If that be so, we refuse to pay you your share of rent and require you to bring a proper suit for rent by you and your co-sharer landlords in which case it would be open to us to claim abatement for rent". There is, in my opinion, no doubt that the tenants could take up that position and compel the landlord to consent to an abatement of rent in his suit for his share of the rent.

It has been urged before us that to allow the tenant to claim abatement of rent in a suit to which the co-sharer landlords are not parties is to affect the integrity of the rent without giving any opportunity to the other co-sharer landlords to be heard. It is argued that rent is one and entire and that to affect that one and entire sum called rent payable by the tenants jointly to the joint landlords in a suit to which they are not all parties is to invite complications. The argument assumes that what is paid by a tenant to a co-sharer landlord under an arrangement is, in fact, rent; but it is nothing of the kind. No doubt it has been referred to as rent in the decisions of our Courts, but that is only for want of a better term. "Rent" under the Bengal Tenancy Act means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the holding by the tenant. That which is payable by a tenant not to his landlord, which must mean the whole body of landlords, but only to one of them is not rent. A suit by a co-sharer landlord for that which is payable to him by a tenant on account of the use or occupation of his share of the land is not a suit contemplated by the Bengal Tenancy Act; the decree passed in such a suit is not a decree under the Bengal Tenancy Act and such a decree is executed under the Code of Civil Procedure and not under the Bengal Tenancy Act. It may be urged that if what is payable by a tenant to a co-sharer landlord is not rent then section 52 is clearly inapplicable. That may be so; but the principle underlying section 52 is

1922.

MAHARAJA KESHO PRASAD SINGH v. RAMDENI SINGH.

DAS, J.

undoubtedly applicable and it would entitle the tenant to take up the attitude either that as he is no longer in possession of the landlord's share of the land held by him there ought in equity to be an apportionment of that which was hitherto payable by him to the landlord on account of the use or occupation of his share of the land; or that the condition under which he agreed to pay to the landlord his share of the rent no longer exists and that he would not pay to the landlord his share of rent unless all the landlords join in bringing a suit as against him or unless the co-sharer landlord consents to an apportionment of rent. A relief given to the tenant in a suit by a co-sharer landlord for his share of the rent does not in any way touch the integrity of the rent, for the subject-matter of the suit is not rent but that which is payable to the co-sharer landlord by the tenant on account of the use or occupation of the co-sharer landlord's share of the land.

In my opinion there is no answer to the claim put forward on behalf of the tenants in these cases. The decision of the learned Judge in the Court below is, in my opinion, right and I would dismiss these appeals with costs.

COUTTS, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

Before Dawson Miller, C.J. and Mullick, J.

1922.

July, 27.

JANKI RAY

v.

RAJA KALANAND SINGH.*

Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *section* 158—*application for assessment of rent, dismissal of, for*

*Second Appeal No. 839 of 1920, from a decision of Babu Kamala Prashad, Officiating Subordinate Judge of Monghyr, dated the 16th June, 1920, modifying a decision of Babu Narendra Lal Bose, Munsif of Monghyr, dated the 28th November, 1919.