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khatian both the rent-paying lands of the holding and the homestead of the raiyat irrespective of whether he does or does not hold his homestead as a part of the holding. Again the presumption might readily yield to well known local custom or usage such as has been indicated. In such a matter no general rule can be laid down; each case will depend upon its own circumstances, at least unless and until it has in a test case been established under section 76 or 78 or both that in any village or in any more extended area every raiyat holds his homestead (or homestead and other lands as the case may be) otherwise than as a part of his holding on which the rent under recovery by sale has accrued.

On this view it will be declared in lieu of the declaration granted by the Courts below that the sales in suit are not binding on the plaintiff and quoad ultra this appeal will stand dismissed. The appellants must pay to the contesting respondent the costs of the appeal.

KULWANT SAHAY, J.—I agree.

Order modified.

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

1928.

May, 25.

NATHUNI SAHU

v.

MAHANTH BHAGWAN GIR.*

Amalgamation of holdings—recognition by thikadar, binding on landlord. Where an amalgamation of holdings has been recognised in good faith in the ordinary course of business by the thikadar in possession of the village in which the holdings are situated, such amalgamation is binding on the landlord.

*Appeals from Appellate Decree nos. 954, 957 and 1032, 1103, 1104, 1105 of 1926, from a decision of W. H. Boyce, Esq., I.C.S., District Judge of Darbhanga, dated the 30th March, 1926, confirming a decision of Babu Rai Krishna Behari Saran, Munsif of Samastipur, dated the 28th October, 1925.

Mahamad Nazirul Hussain v. *Chuni Kamti*(1) and *Maharaja Kesho Prasad Singh* v. *Loknath Roy*(2), referred to.

Appeals nos. 954 and 957 by the defendants.

Appeals nos. 1032, 1103, 1104 and 1105 by the plaintiffs.

The facts of the cases material to this report are stated in the judgment of Kulwant Sahay, J.

Janak Kishore, for the appellants in appeals nos. 954 and 957.

B. N. Mitter and *B. K. Sinha*, for the appellants in appeals nos. 1032, 1103, 1104 and 1105.

B. N. Mitter and *B. K. Sinha*, for the respondents in appeals nos. 954 and 957.

Janak Kishore, for the respondents in appeals nos. 1032, 1103, 1104 and 1105.

KULWANT SAHAY, J.—These six appeals arise out of six suits instituted by the plaintiffs who are tenants of the defendants for a declaration that the lands set out in the schedules attached to the plaint in each case formed one holding in their possession and that they had been recognized as raiyats in respect of those holdings.

It appears that in all the suits, except one, the plaintiffs had their ancestral holdings, and in addition they purchased either whole or portions of other holdings from other tenants; and their case was that the lands comprised in their original holdings as well as the lands purchased by them out of the holdings of other tenants were all amalgamated and formed into one holding with one rental and such amalgamation and rental were recognized by the thikadars who were in possession of the village for several years and that subsequently when the village came into the direct possession of the defendants landlords they also recognized the holdings as one holding.

(1) (1917) 2 Pat. L. J. 151. (2) (1926) 7 Pat. L. T. 73.

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The learned Munsif decreed four of the suits, and dismissed two of them; and on appeal the decrees of the Munsif were confirmed by the learned District Judge.

The tenants appealed against the decrees in two of these suits, and the defendants landlords appealed against the decrees in the remaining four suits.

As regards the appeals of the tenants, second appeals nos. 954 and 957, it has been found that their suits are barred by res judicata. It appears that the defendants landlords had brought suits for rent against the plaintiffs in those two suits in respect of their original holding. In those suits the present plaintiffs had raised an objection that their holding consisted not only of the lands originally held by them but also of some other lands purchased by them out of the holdings of other tenants and that both classes of lands formed one holding and that the suits for rent instituted in respect of their original holding alone were bad and not maintainable, inasmuch as they were in respect of a part of the holding. In those rent suits a question was raised whether there was a recognition by the thikadars or the landlords of the purchase by the present plaintiffs and of the amalgamation of the two holdings; and it was found that there was no such amalgamation and no recognition of such a purchase or amalgamation. In the present suits the same questions are raised and, therefore, both the Courts below have held that the question is barred by the principle of res judicata.

It is contended on behalf of the tenants appellants that there could be no res judicata, firstly, because the vendors of the plaintiffs were not parties in the previous suits whereas they are parties in the present suits; and, secondly, because the sons of some of the plaintiffs in the previous suits were not parties in those suits, whereas they are parties in the present suits. These grounds are not such as to affect the

question of res judicata. The vendors of the plaintiffs were not necessary parties in the previous suits. The decision in the previous suits was between the present plaintiffs and the present defendants 1st party; and these two parties were interested in the decision of the question. The fact that the vendors were not parties in the previous suits will not in any way affect the question of res judicata. As regards the sons not being parties in some of the previous suits, it is clear that they are members of the joint family and they were represented by their father in the previous suits.

It is, therefore, clear that the decisions of the Courts below in suits nos. 123 and 124 giving rise to second appeals nos. 954 and 957 are correct, and these appeals must be dismissed with costs.

As regards the appeals by the landlords, it appears that in three of those cases there was a recognition by the present defendants themselves, and the learned Advocate for the appellants very candidly admits that in those three cases he has no point to urge.

In one case, namely, suit no. 132 giving rise to second appeal no. 1104 it is contended that there was no recognition by the present defendants, but there was a recognition by the thikadars who were in possession of the village and such a recognition is not binding on the defendants. There is a clear finding in the present case that there was a recognition by the thikadars and that such a recognition was made in good faith and in the ordinary course of business. Under the circumstances such a recognition must be binding upon the landlords. A reference is made to *Mahamad Nazirul Hussain* v. *Chuni Kamti*(1) and *Maharaja Kesho Prasad Singh* v. *Lokhnath Roy*(2), and it is contended that in order that the recognition by a thikadar may be binding upon the landlord there

(1) (1917) 2 Pat. L. J. 151. (2) (1926) 7 Pat. L. T. 73.

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must be a finding that such a recognition was for the benefit of the estate. Neither of these two cases, however, is an authority for the proposition that the recognition by a thikadar must be for the benefit of the estate in order to be binding on the landlord. The headnote in *Mahamad Nazirul Hussain* v. *Chuni Kamti*(1) does not appear to be correct, when it says that the consent of the thikadar given in good faith for the benefit of the estate is binding upon the landlord. There is no such observation made in the course of the judgment itself. It so happened that in that particular case the recognition happened to be for the benefit of the estate, inasmuch as it amounted to an enhancement of the rent. In *Maharaja Kesho Prasad Singh* v. *Loknath Roy*(2) also there was nothing in the judgment to show that it was necessary for the recognition by a thikadar to be binding upon the landlord that such a recognition should be for the benefit of the estate. A reference was merely made to the decision in the earlier case of *Mahamad Nazirul Hussain* v. *Chuni Kamti*(1), but the reason upon which the recognition was held to be binding upon the landlord was not that it was for the benefit of the estate, and there was nothing in the judgment to show that such a benefit is necessary for making the recognition binding upon the landlord.

Having regard to the findings arrived at in the present case that there was a recognition by the thikadars of the amalgamation of the holdings, it is clear that there is no substance in these appeals either.

The result is that all the four appeals by the defendants landlords are also dismissed with costs.

MACPHERSON, J.—I agree. I desire to express my concurrence with the remark of Chapman, J., in *Mahamad Nazirul Hussain* v. *Chuni Kamti*(1).

(1) (1917) 2 Pat. L. J. 151. (2) (1926) 7 Pat. L. T. 78.