year 1319 downwards show that the defendants who entered into these compromise petitions were recorded as tenants of the holdings in the landlord's collection papers and that therefore the holdings were represented by them. This is a finding of fact which concludes this argument.

The appeals must be dismissed with costs.

DAS, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

Before Jwala Prasad and Wort, JJ.

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Land Registration Act, 1876, (*Beng. Act VII of* 1876), *section* 78, *scope of—Bengal Tenancy Act*, 1885 (*Act VIII of* 1885), *sections* 60, 148 *and* 159—"*landlord*," *meaning of—landlord, whether bound to get his name recorded in Collector's land register—*"*proprietor, manager or mortgagee*," *failure of, to register name, whether affects title to land—Co-sharer landlord, decree obtained by, whether a rent decree, where names of co-sharer landlords not registered.*

The inability of a "proprietor, manager, or mortgagee" to obtain a rent decree by reason of his failure to get his name recorded in the Collector's land register does not affect his title to the land in respect whereof rent is due.

Section 60, Bengal Tenancy Act, 1885, and section 78 of the Land Registration Act, 1876, which require the names of "proprietors, manager or mortgagees" to be recorded in the Collector's land register, do not refer to "landlords" as defined in the Tenancy Act.

*Appeal from Appellate Decree no. 744 of 1928, from a decision of Rai Bahadur J. Chattarji, Additional District Judge of Shahabad, dated the 24th February, 1926, reversing a decision of Maulavi Abdus Shakur, Subordinate Judge of Arrah, dated the 23rd January, 1925.

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Therefore, a landlord is entitled to obtain a decree for rent against his tenant, although his name may not have been recorded in the Collector's Land Register. Sections 148 and 159 of the Bengal Tenancy Act relating to suits for rent refer to landlords and are not confined to "proprietors, managers or mortgagees."

A decree obtained by a co-sharer landlord in a suit for rent to which the other co-sharer landlords, whose names may not have been recorded in the Collector's land register, were not parties, is only a money decree, irrespective of the fact that such co-sharer landlords were, under the statute, incompetent to realise rent from the tenants.

Nibaran Chandra Roy v. *Nabin Chandra Roy*(1) followed.

Appeal by the plaintiffs.

The facts of the case material to this report are stated in the judgment of Jwala Prasad, J.

P. Dayal and *T. N. Sahai* for the appellants.

N. N. Sinha and *Bhubaneshwari Narain Singh* for the respondents.

JWALA PRASAD, J.—This appeal arises out of a suit for ejectment in respect of certain lands bearing khata no. 97 and khesra nos. 173, 175, 177, 186 and 193 in mauza Pipra. The lands measure 5.16 acres and were recorded in the survey record-of-rights as sharai-moiyan of the defendants 1 and 2 and their predecessors (Exhibit 2). They were given in rehan under two deeds, one exhibit 5 dated the 1st July, 1894, for Rs. 999 and the other exhibit 5(*a*) dated the 20th June 1908, for Rs. 1,500 in favour of the predecessor in interest of the plaintiffs. The plaintiffs Balaram Prasad and Raghunandan Prasad are the sons of Jagarnnath Prasad deceased and plaintiff no. 3 Musammat Radhika Kuer is the widow of Jagarnnath Prasad. They were the proprietors of mauza Pipra in which the land in suit lies. Jagarnath Prasad executed a mortgage bond in favour of Satnarain Panre of Berja and deposited with him

(1) (1924) 40 Cal. L. J. 504.

the aforesaid rehan bonds of 1894 and 1908 along with other bonds by way of security for the mortgage money. The plaintiffs instituted suit no. 113 of 1914 against Jagarnath Prasad, father of plaintiffs 1 and 2 for partition of village Pipra and the other villages belonging to the family. While the suit was pending on the 19th February 1915 Jagarnnath Prasad executed a sale deed in favour of defendants 3 and 4 in respect of the 16 annas of mauza Pipra and other villages. We are concerned in this case with Pipra alone and therefore the other villages need not be mentioned by names. On the 20th October, 1915, the partition suit was disposed of declaring the plaintiffs 1 and 2 entitled to 8 annas of village Pipra and the aforesaid rehan deeds of 1894 and 1908 were also allotted to their share. In 1916 defendants 3 and 4 in spite of the declaration of the title of the plaintiffs to 8 annas of Pipra in the aforesaid suit of 1915, got their names recorded in respect of the 16 annas of the said mauza in the Collector's Land Registration Department. The plaintiffs thereupon instituted the Title Suit no. 387 of 1916 against Jagarnnath Prasad and defendants 3 and 4 alleging the sale of the entire 16 annas in favour of the defendants 3 and 4 as being collusive for setting aside the sale. The sale was set aside by the judgment of the Subordinate Judge on the 22nd July, 1918, and it was upheld by the High Court on the 10th July, 1922. On the strength of this decree the plaintiffs got their names registered in the Collector's dakhil-kharij register in respect of 8 annas of mauza Pipra on the 7th August, 1923. In the meantime while this litigation was going on and the title of the plaintiffs was declared by the Subordinate Judge, defendants 3 and 4 obtained a rent decree against defendants 1 and 2 for 16 annas of rent, who had by virtue of a shikmi settlement by the plaintiffs and their father been in actual possession of the land after the execution of the rehan bonds of 1894 and 1908. Defendants 3 and 4 in execution of the rent decree put up the lands in suit to sale. The plaintiffs applied

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to be made parties to the rent suit and their application was refused. Then when the property was put up to sale they applied for the mortgages of 1894 and 1908 to be notified and they were notified. On 5th July, 1921, defendants 3 and 4 purchased the lands in dispute in execution of their rent decree. The plaintiffs applied to have the sale set aside under Order XXI, rule 90, but their application was rejected on 5th September, 1921. On 3rd May, 1922, defendants 3 and 4 got dakhal-dehani in respect of the entire property. On 30th August, 1922, the defendants 3 and 4 applied to the Collector to annul the two encumbrances, namely, the aforesaid rehans of 1894 and 1908 under section 167 of the Bengal Tenancy Act. Their application was opposed on behalf of the plaintiffs but their objection was overruled by the Collector by his order dated the 23rd September, 1922, and by the order of the Collector the aforesaid mortgages in favour of the plaintiffs were annulled. Aggrieved by this order the plaintiffs have instituted the suit.

The only point that arises in this appeal for consideration is whether defendants 3 and 4 had purchased the lands in dispute with the aforesaid encumbrances or usufructuary mortgages of 1894 and 1908 and whether they were entitled to have them annulled under section 167 of the Bengal Tenancy Act. The Munsif held that the decree obtained by defendants 3 and 4 was a mere money decree inasmuch as they were not the sole landlords or the entire body of landlords. According to the Munsif the plaintiffs were entitled to 8 annas share of the rent in the disputed lands and they were landlords to that extent within the meaning or scope of the aforesaid section of the Bengal Tenancy Act. The learned Munsif accordingly decreed the plaintiffs' suit.

On appeal the Additional District Judge by his decision on the 24th February, 1926, took a contrary view and held that the defendants 3 and 4 had obtained

a rent decree and the entire holding by the sale in execution of that decree passed to them free from all encumbrances and he therefore set aside the decree of the Munsif.

On behalf of the appellants this view of the learned Subordinate Judge is disputed. Now at the time when the decree for arrears of rent was obtained on the 10th April, 1918 (Exhibit B), the plaintiffs had already obtained a decree from the Subordinate Judge in Suit no. 387 of 1916 declaring their title to 8 annas share in village Pipra and other villages. That decree was passed on the 22nd July 1918. Therefore at the date of the rent decree the defendants 3 and 4 were not the sole landlords of the holding in question.

Mr. Nirsu Narain Sinha on behalf of the respondents contends that inasmuch as the plaintiffs had not got their names registered in the dakhil-kharij register of the Collector under Act VII of 1876 they were not entitled to obtain a rent decree by virtue of section 78 of that Act. A short answer to this contention is that their inability to obtain a rent decree by reason of their names having not been entered in the Collector's register does not affect their title to the lands in dispute as landlords thereof. This is laid down in the second paragraph of section 60 itself. It says that nothing in the section "shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee." Thus although he may not himself be able to obtain a rent decree, his right as proprietor, manager or mortgagee is not affected. In other words, he does not cease to be a co-proprietor, manager or mortgagee. Only the Rent Court or the Revenue Court will not help him in the realisation of his dues from the tenants until he has got his name registered under the Land Registration Act. Again a landlord may not be a proprietor, manager or mortgagee. The word "proprietor" is a technical term and it is defined in the Bengal Tenancy Act in section 3, clause (2) as meaning

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a person owing, whether in trust or for his own benefit, an estate or a part of an estate. Clause 8 of section 3 of the Land Registration Act, defines a proprietor to mean every person being in possession of an estate or revenue-free property, or of any interest in an estate or revenue-free property, as owner thereof; and includes every farmer and lessee who holds an estate or revenue-free property directly from or under the Collector. The provisions of the Land Registration Act, section 38 upwards, require the proprietors, managers and mortgagees to record their interest in the land registration register. There is no provision in the Act for the registration of farmers and lessees who do not directly hold under the Government. Yet they are landlords within the meaning of the term of the Act. There is no provision in the Land Registration Act for the registration of these persons, yet they may be landlords in respect of the lands held by tenants under them and as there is no provision in the Land Registration Act for the registration of their interest nor is there any obligation on their part to have their interest registered, they would be entitled to institute a suit and obtain a decree in respect of the rent due from the tenants in spite of the fact that their names have not been registered in the Collector's register. Again a landlord may be a tenure holder who has a right to realise rent from his tenants. He will be entitled to institute a suit for rent and obtain a rent decree in spite of the fact that his name is not registered in the Collector's register. The word "landlord" has been defined in section 3, clause (4), of the Bengal Tenancy Act to mean a person immediately under whom a tenant holds and includes the Government Thus landlords may be persons other than proprietors, managers and mortgagees who are required by the Land Registration Act to have their names registered in the Collector's register. Section 60 of the Bengal Tenancy Act and section 78 of the Land Registration Act relate exclusively to proprietors, managers or mortgagees. They do not refer to landlords at all, for a landlord does not come

within the scope of those sections. Sections 148 and 159 including the sub-sections refer to landlords and do not confine themselves to proprietors, managers or mortgagees. A co-sharer landlord may be entitled to obtain a decree for rent in respect of his share but unless he complies with the provisions of section 148(*a*) and 159(*b*) the decree obtained by him will not be a rent decree so as to entitle him to obtain by purchase in execution of that decree the holding itself free from all encumbrances. He will be entitled to realise his decree by the sale of the right, title and interest of the judgment-debtor. This view is supported by the decision in *Nibaran Chandra Roy* v. *Nabin Chandra Roy*(1) where his Lordship observed, "I can see no objection on principle that a co-sharer landlord may not in the presence of the other co-sharers who are incompetent to realise their rent sue for his rent and recover it although there had been no separate collection before."

In that case the co-sharers were incompetent to realise the rent on account of their names not having been registered under sections 15 and 16 of the Bengal Tenancy Act by the Collector.

The plaintiffs in this case had a subsisting interest in the land in suit as landlords thereof along with their father Jagarnnath Prasad. The partition Suit no. 113 of 1914 and Title Suit no. 387 of 1916 did not create any new title but simply confirmed the title which they had in themselves and had been in possession thereof. The partition decree was based upon the assumption that they were in possession of 8 annas interest in the property. Therefore they had not lost the interest by reason of the mala fide sale of the entire 16 annas by their father which subsequently was held to be invalid so far as their interest of 8 annas was concerned. The fact that they did not get their names registered in the Land Registration Department, and in fact they could not do so

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until the partition suit was decided, did not affect their subsisting title and they did not cease to be landlords. The defendants 3 and 4 were never 16 annas landlords and the decree obtained by them in respect of 16 annas rent was a mere money decree. They purchased only the right, title and interest of the tenant and judgment-debtors with the encumbrances thereon, namely the usufructuary mortgages of 1894 and 1908 which mortgages were duly notified in the proclamation of sale. The proceeding taken by them and the order passed by the Collector under section 167 of the Act annulling those encumbrances was therefore without jurisdiction.

The result is that the judgment of the lower appellate Court is set aside and that of the Munsif is restored. The appeal is decreed with costs.

WORT, J.—I entirely agree.

Appeal dismissed.

PRIVY COUNCIL.

1928.

November, 30.

SARAT KUMARI DEBI
v.
SAKHI CHAND.

Probate—Will—Onus of Proof—Will prepared under Suspicious Circumstances—Severable Provision invalid—Grant of Probate as to rest of Will.

In all cases in which a will is prepared under circumstances which raise the suspicion of the Court that it does not express the mind of the testator, it is for those who propound the will to remove that suspicion, and it is only when that has been done that the onus is thrown on those who oppose the will to prove fraud or undue influence. The above principle is not confined to cases in which the will has been prepared by a person who takes a pecuniary benefit under it.

*Present: Lord Phillimore, Lord Atkin and Sir Lancelot Sanderson.