

## APPELLATE CIVIL.

*Before Das and Ross, JJ.*

LOKI GOPE

v.

RAMNANDAN PRASAD SINGH.\*

*Bengal Tenancy Act, 1885, (Act VIII of 1885), section 147-A (3), non-compliance with, whether makes the consent decree a nullity.*

Section 147-A (3), Bengal Tenancy Act, 1885, provides as follows :—

“Notwithstanding anything contained in section 373 of the Code of Civil Procedure, if any suit between landlord and tenant as such is wholly or partly adjusted by agreement or compromise, the Court shall not pass a decree in accordance with such agreement or compromise unless it is satisfied, for reasons recorded in writing, that the terms of such agreement or compromise are such that, if embodied in a contract, they could be enforced under this Act :

Provided that in the case of a suit instituted by the landlord to enhance the rent, the enhancement, if any, agreed upon may be decreed if the Court be satisfied, for reasons to be recorded in writing, that such enhancement is fair and equitable and in accordance with the rules laid down in this Act for the guidance of Courts in increasing rents.”

*Held*, that a consent decree passed by a court without complying with the provisions of section 147-A (3) is not a nullity.

*Ishan Chandra Banikya v. Moomraj Khan*, (1), *Deolagan Singh v. Gulbansi Koer* (2), followed.

*Kunj Behary Chaudhury v. Charan Singh* (3), and *Sarjugsharan Lal v. Dukhit Mahto* (4), not followed.

## Appeals by the defendants.

\*Appeals from Appellate Decrees nos. 547 to 553 of 1927, from a decision of Babu Kamala Prasad, Subordinate Judge of Patna, dated the 22nd of March, 1927, modifying a decision of Babu Radha Krishna Prasad, Munsif of Patna, dated the 17th of September, 1926.

(1) (1925-26) 80 Cal. W. N. 940.

(2) (1922) 69 Ind. Cas. 616.

(3) (1923) 72 Ind. Cas. 40.

(4) (1912-13) 17 Cal. W. N. 496.

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

*Nurul Hassan*, for the appellants.

*Sir Sultan Ahmed* with him *Rajeswari Prasad*, for the respondent.

Ross, J.—These are appeals by the tenants against decrees in suits for rent; and the question is as to the rate of rent. The tenants pleaded the rate recorded in the record-of-rights and the plaintiffs' claim which has been decreed, is at a much higher rate—in some cases more than double as great. It appears that after a case under section 103, Bengal Tenancy Act in the settlement proceedings, the plaintiffs brought suits for rent and these suits were determined by compromises and the decision of the present appeals turns on the question of the validity of these compromise decrees. The rate agreed to in the compromises was admittedly a rate which exceeded the khatian rate by more than 2 annas in the rupee; and the compromises were bad unless there was a bona fide dispute as to the rate of rent. And the first argument of the learned Advocate for the appellants is that there is no evidence of any bona-fide dispute about the rate of rent before the date of the compromises. He points out that the village papers which were produced by the plaintiffs relating to the years 1308 to 1318 had not been relied upon by the Courts below. But there is evidence after the compromises which affords ground for concluding that these compromises must have settled a bona fide dispute, because the tenants subsequently complied with their terms. Thus in a long series of village papers from 1319 to 1328 the collections show the compromise rates; and these papers have been believed. Moreover in the suit out of which second appeal no. 547 arises there were road-cess returns filed by the tenants which expressly referred to these compromises; and in the suit out of which second appeal no. 548 arises there were ijara deeds executed by the tenant the rate

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of rent in which shows that the compromises had been accepted. It is contended that these road-cess returns and ijara deeds can only bind the tenants in these particular suits. But apart altogether from the question of the collection papers which have been believed and which relate to all the suits, these road-cess returns and ijara deeds having been submitted and executed by certain of the tenants, they gave rise to an inference that the compromises were genuine compromises by the tenants as a whole.

Then it was said that the compromises were a nullity, because of the provisions of clause (3) of section 147-A, which had not been shown to have been complied with and reference was made to a decision of my own in *Kunj Behary Chaudhury v. Charan Singh* (1). I am bound to say that I now consider that that decision was wrong. It followed *Sarjugsharan v. Dukhit* (2), which has subsequently been dissented from by the Calcutta High Court in *Ishan Chandra v. Moomraj* (3); and there was in fact an earlier decision by a Division Bench of this Court, which was a binding authority but which was not cited in the argument, to the opposite effect: *Deolagan Singh v. Gulbansi Koer* (4). This argument therefore fails.

The last point taken was that all the tenants were not parties to the compromises and that at the utmost there can only be a money decree against those tenants who were actual parties. Reference was made to the finding of the learned Munsif where he pointed out that in several cases the compromise decrees contained only one name whereas the khatian entry in respect of the same holdings contained several names. Now the finding of the learned Subordinate Judge in appeal is that the village papers from the

(1) (1923) 72 Ind. Cas. 40.

(2) (1912-13) 17 Cal. W. N. 496.

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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.*

BALIRAM PRASAD

v.

HARNANDAN RAI.\*

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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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