REVISIONAL CIVIL.

1930.

February, 7, 24.

Before Terrell, C.J., and James, J.

BACHA SHAM SUNDER KUER

v.

BALGOBIND SINGH.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *Order* 1, *rule* 10—*rent suit—intervenor, whether should be made a party.*

An intervenor, who in a duly verified petition sets forth the allegation that he has purchased the holding and that the landlord has recognised him as his tenant, ought to be joined as a party and at the hearing of the rent suit, and not before, the truth of the intervenor's allegations should be investigated.

Sarju Mahton v. *Musammat Bibi Bersatan*(1) and *Nilambar Jha* v. *Chandradhari Singh*(2), followed.

Kuldip Mahton v. Patia(3), disapproved.

Satyadeva Sahay v. *Musammat Jhamel Kuer*(4), distinguished.

Application in cases nos. 590 and 591 by the plaintiff and in case no. 618 by the intervenor.

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

C. P. Sinha and *J. M. Ghosh*, for the petitioners.

B. C. Sinha and *Janak Kishore*, for the opposite party.

* Civil Revision nos. 590, 591 and 618 of 1929, against an order, dated the 9th September, 1929, passed by Babu L. K. Banerjee, Additional Munsif of Jehanabad.

(1) (1925) 8 Pat. L. T. 305.
(2) (1924) 10 Pat. L. T. 442.
(3) (1927) 9 Pat. L. T. 437.
(4) (1925) 7 Pat. L. T. 602.

1930.

BACHA SHAM SUNDER KUER v. BALGOBIND SINGH.

COURTNEY TERRELL, C.J.—These applications for revision are in respect of orders passed in three rent suits and the same question arises in all three, that is to say, whether, in a suit for rent by a landlord against a tenant, a third party who alleges that the holding has been transferred to him with the consent of the landlord, and that he and not the defendant is the real tenant of the holding, can claim to be added as a party. In application no. 590 arising out of suit no. 34 of 1928 and in no. 591 arising out of suit no. 36 of 1928 the landlord sued the widow of the recorded tenant, the widow being entered in the landlord's serishta. The intervening party applied to be added as a defendant alleging that he had purchased the entire holding from the widow and he exhibited what purported to be rent receipts granted to him by the landlord. In each of these cases the Munsif added him as a defendant and the landlord applies for revision of the orders.

In application no. 618 arising out of suit no. 295 of 1928 the plaintiff sued the heir of the deceased recorded tenant. Before the suit was heard the applicant for revision filed an application stating that he had purchased the entire holding from the recorded tenant and exhibited what purported to be rent receipts granted to him by the landlord. The Munsif rejected the application and recorded the following order :—

"The plaintiffs object to his being made a party. I do not think it proper to implead him in spite of the plaintiffs' objection and when the plaintiffs are prepared to take all possible risk. The applicant's title, if any, cannot be affected by the result of this suit to which he is not a party. The petition is rejected."

The reported decisions are somewhat in conflict and it is desirable to settle the course of procedure for the guidance of Courts trying rent suits. It is true that section 148 of the Bengal Tenancy Act provides a special procedure for the recovery of rent and it has long been held undesirable to turn rent suits

1930.

BACHA SHAM SUNDER KUER v. BALGOBIND SINGH.

COURTNEY TERRELL, C.J.

with their simplified procedure into title suits in which complicated questions arise. Nevertheless it is desirable that multiplicity of suits be avoided. Now in a rent suit the plaintiff has first to establish that the relationship of landlord and tenant exists between himself and the defendant. It is clear that the object of the intervening party is to set up a contention of fact material to the disposal of the suit as between the landlord and the defendant sued, that is to say, that the defendant is not in fact the tenant of the landlord. It is equally clear that at the same time or other the issue as between the landlord and the intervening party must be tried. If the landlord gets a decree against the defendant and puts the holding up to sale the party who claims that he has purchased it with the consent of the landlord will be able to set up his claim in the execution proceedings. In order to avoid multiplicity of suits and proceedings it is desirable that this simple contention be tried in the original rent suit. Order 1, rule 10(*2*), Code of Civil Procedure, is as follows:—

> "The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

In the circumstances of these cases the presence of the intervening party will certainly enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The procedure which, in my opinion, should be followed in such cases is that the petition of the intervening party duly verified should set forth the allegation that he has purchased the holding and that the landlord has accepted him as a tenant. That should be sufficient to justify the tribunal in ordering that the petitioner may be joined as a party and at the

hearing of the rent suit, and not before, the truth of the petitioner's allegations should be investigated. The issues are simple and are not open to the objection that a rent suit is being turned into a complicated title suit. It might well be that if the petitioner set up the allegation that there was a custom of transferability in the neighbourhood and that a transfer sanctioned by such custom had taken place, it would be more convenient to leave such an allegation to be tried in the execution proceedings or in a regular suit and to refuse the application of the petitioner to be made a party. Order 1, rule 10, of the Code of Civil Procedure, subject to the provisions contained therein, leaves a discretion to the tribunal which it may be trusted to exercise but in cases of the kind now before us that discretion should be exercised in the direction of joining the alleged transferee.

There have been two cases in this Court which would seem to indicate a contrary view. In *Satyadeva Sahay* v. *Musammat Jhamel Kuer*(1) a party applied to be made a co-defendant in a rent suit on the allegation that he had purchased a portion of the holding only and alleged that he had been recognised by one only of the co-sharer landlords. Mr. Justice Bucknill refused to allow him to be added as a party. The facts of this case are not like those of the cases before us in which there is a simple issue as to whether the defendant or the intervenor is the rightful tenant. In *Kuldip Mahton* v. *Patia*(2) the facts were somewhat similar to those of the present cases and the learned Judge considered that a question of recognition could not be properly tried in a rent suit and that there was no jurisdiction under Order 1, rule 10, to add the intervenor as a party. With the greatest respect to the learned Judge I think that this was taking too narrow a view of the rule and the case was, in my opinion, wrongly decided. I think that the more correct view was expressed in *Sarju*

(1) (1925) 7 Pat. L. T. 602.
(2) (1927) 9 P. L. T. 437.

1930.

BACHA SHAM SUNDER KUER v. BALGOBIND SINGH.

COURTNEY TERRELL, C.J.

Mahton v. *Musammat Bibi Bersatan*(1) and in *Nilambar Jha* v. *Chandradhari Singh*(2). Those cases arose out of exactly similar facts and, as in the cases before us, it was contended that the rent suit was a fraudulent one to obtain a fraudulent ex parte decree. Whether this allegation be true or not the issues of fact as to the transfer of the holding and the consent of the landlord should be properly tried after admission as a defendant of the intervening party and there is no need to defer the trial of these issues for separate and later proceedings. I would, therefore, in cases nos. 590 and 591 reject the applications with costs and in no. 618 I would allow the application with costs and direct that the intervening party be admitted as a co-defendant. In cases nos. 590 and 591 the Munsif has in the presence of the plaintiff investigated and come to a finding on the evidence and that finding need not be disturbed. In case no. 618 the issue of fact as to the alleged transfer and recognition of the intervening party must be tried at the hearing of the rent suit.

JAMES, J.—I agree.

Rule discharged in nos. 590 *and* 591.

Rule made absolute in no. 618.

APPELLATE CIVIL.

1930.

April, 24.

Before Fazl Ali and James, JJ.

CHOUDHURI GOVINDA CHANDRA DAS

v.

HAYAGRIBA UPADHAYA.*

Hindu law—father executing security bond for the honesty of another—son or grandson, whether liable—plea, whether can be successfully taken after joint family property sold in execution of decree against father.

* Circuit Court, Cuttack. Appeal from Original Decree no. 6 of 1928, from a decision of M. E. A. Khan, Subordinate Judge of Cuttack, dated the 23rd April, 1928.

(1) (1925) 8 Pat. L. T. 305. (2) (1924)-10 Pat. L. T. 442.