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appeal, and it was not necessary for them to make parties the heirs of Rashid.

I would allow these appeals, set aside the decrees of the District Judge, and restore the decrees of the Subordinate Judge, with this provision, that the decrees must be treated as subject to amendment if in any instance a decree has been given in respect of a crop which has not been claimed in the plaint. The plaintiff-appellants are entitled to their costs throughout.

MACPHERSON, J.—I agree.

Appeals allowed.

APPELLATE CIVIL.

Before Macpherson and James, JJ.

RAI BRINDABAN PRASAD

v.

RAI BANKU BIHARI MITRA.*

Land Registration Act, 1876 (Beng. Act VII of 1876), section 78—suit by registered proprietor—substitution of legal representative during the pendency of suit—name of substitute not registered—section 78, whether a bar to passing of decree.

Where a suit for rent was brought by two plaintiffs whose names were duly registered under the Land Registration Act, 1876, but during the pendency of the suit one of the plaintiffs died and his heirs were substituted in his place, but the names of the substitutes were not recorded under the Act, *Held*, that the provisions of section 78 of the Land Registration Act, 1876, had no application and did not bar the passing of a decree in favour of the substituted persons as the representatives of the deceased plaintiff to whom the tenant had all along been bound to pay the rent claimed.

*Appeal from Appellate Decree no. 150 of 1932, from a decision of Babu Ram Bilas Sinha, Subordinate Judge of Gaya, dated the 14th of August, 1931, modifying a decision of Babu Bijay Krishna Sarkar, Munsif of Aurangabad, dated the 2nd of January, 1931.

Belchambers v. Hussan Ali Mirza(1) and *Pramada Sundari Debi v. Kanai Lal Shaha*(2), followed.

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Umeshwardhari Singh v. Neman Singh(3) and *Shaikh Sharafat Karim v. Harangi Singh*(4), referred to.

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Per MACPHERSON, J.—The legislature could not have intended such hardship to the heirs and representatives of plaintiffs who had brought a suit not barred in any way by section 78, and the words of the provision do not constrain to such a construction.

Appeal by the defendant.

The facts of the case material to this report are set out in the judgment of Macpherson, J.

Sarju Prasad (with him *Chaudhury Mathura Prasad* and *Brijkishore Prasad*), for the appellant.

S. K. Mitra, for the respondents.

MACPHERSON, J.—This second appeal by the defendant arises out of a rent suit brought by two plaintiffs, the first being Sailendra Nath Bose as trustee of the estate of Banko Behari Mitra, and the second being Biman Bihari Mitra, brother of Banko Behari Mitra, both of whom stood recorded in the Land Registration register.

During the hearing Banko Behari Mitra and his wife were substituted for the first plaintiff whereupon the defendant filed an additional written statement claiming that as their names had not been entered in the Land Registration register, he was not bound to pay them rent. The Courts below decreed the suit (with a reduction of the damages) but giving effect to defendant's objection so far as to direct that the plaintiffs should not execute the decree without producing a copy of Register D showing that the names of Banko Behari and his wife had been duly

(1) (1898) 2 Cal. W. N. 493.

(2) (1899) I. L. R. 27 Cal. 178.

(3) (1928) I. L. R. 7 Pat. 690.

(4) (1931) I. L. R. 11 Pat. 30.

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entered. The position of plaintiff no. 2 was not considered separately.

In second appeal the main argument is that no decree should have been passed by reason of the provisions of section 78 of the Land Registration Act, 1876. That enactment reads:

"No person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act."

Mr. Sarju Prasad relies upon the decision of this Court in *Umeshwardhari Singh v. Neman Singh*⁽¹⁾ as interpreted in *Shaikh Sharafat Karim v. Harangi Singh*⁽²⁾. But those cases do not really touch the point under discussion. In *Umeshwardhari Singh's* case⁽¹⁾ the plaintiff had brought the suit before he had been registered and not only the suit but also the appeal against the decision of the trial Court had been dismissed. While his second appeal was pending, the plaintiff's name was registered and it was then held that the Court could take notice of the fact of registration and accordingly section 78 was no longer a bar to a decree being passed in his favour (though he should not get damages or any costs and the defendants should get from him their costs of the first two Courts). In that case Mullick, J. remarked that section 78 did not prevent a suit from being filed by the unregistered proprietor, manager or mortgagee, but that the court should not order recovery of rent till registration was effected. It was in reliance on this remark that the Courts in the present litigation directed that the decree could only be put in execution if the decree-holder showed that he had in fact been registered. The second case cited was not brought to the notice of the Courts. It was there pointed out that the remark of Mullick, J. was purely obiter and that a decree for the rent conditional upon the

(1) (1928) I. L. R. 7 Pat. 690.

(2) (1931) I. L. R. 11 Pat. 30.

unregistered plaintiff getting his name registered before he put the decree in execution cannot be granted.

In point of fact, therefore, the decree ought not to have been in the form in which it has been passed. But the point does not avail the appellant who is by no means prejudiced by the obstacle thus erroneously placed in the path of the decree-holder. Actually the respondents also make no grievance of it since it is pointed out at the Bar that registration took place in 1931 shortly after the judgment under appeal was passed, so that it presents no difficulty to them. Even on *Umeshwardhari Singh's* case⁽¹⁾ they must now be successful in this appeal in the main.

The fact, however, is that the decision does not depend upon the two rulings cited in which the suit was brought by an unregistered plaintiff. Here the suit for rent was brought by two plaintiffs to whom the provisions of section 78 had no application and when Banko Behari and his wife were substituted in place of one of them it was as the representatives of that plaintiff to whom the defendant had all along been bound to pay the rent claimed. The same question arose in two Calcutta cases. The first is *Belchambers v. Hussan Ali Mirza*⁽²⁾ where the person substituted was the receiver to the estate of the plaintiff no. 1. The second was *Pramada Sundari Devi v. Kanai Lal Shaha*⁽³⁾ where the person substituted for the plaintiff was his widow. It was held that in such cases the provisions of section 78 had no application and did not bar the passing of a decree in favour of the person substituted. I see no reason to differ from this view which has never been doubted over a long period of years: in fact, it is difficult to believe that the legislature could have intended such hardship to the heirs and representatives of plaintiffs who had

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brought a suit not barred in any way by section 78, and the words of the provision do not constrain to such a construction.

I would dismiss this appeal with costs.

JAMES, J.—I agree.

Appeal dismissed.

MAGHER-
 SON, J.

APPELLATE CIVIL.

Before Khaja Mohammad Noor and Varma, JJ.

August, 30.
 September,
 3, 4, 5,
 6, 7.
 November,
 15.

THAKURAIN KUSUM KUMARI

v.

BISESWAR LAL MARWARI.*

Sontal Parganas Settlement Regulation, 1872 (Reg. III of 1872), sections 5, 5A and 6—bar imposed by section 5, whether relates to the trial of suits—property in suit situated partly in the Sontal Parganas and partly in another district—concurrent jurisdiction to try the suit vested in both courts—suit transferred under section 5A to the District Judge of the Sontal Parganas—transfer of that suit by the District Judge to Bhagalpur—transfer merely irregular—no inherent want of jurisdiction in the Bhagalpur court—objection as to jurisdiction raised at a late stage—waiver—section 6, provisions of, whether mandatory—court not empowered to decree suit on compromise allowing interest in contravention of section 6—order recording compromise, whether a mere matter of form—Code of Civil Procedure 1908 (Act V of 1908), Order XXIII, rule 3.

Where properties are situated partly in the Sontal Parganas and partly in the district of Bhagalpur, to which the Code of Civil Procedure applies, the courts of the Sontal Parganas and those of Bhagalpur have concurrent jurisdiction to entertain and hear suits respecting such properties.

*Appeal from Original Order no. 259 of 1931 and Civil Revision no. 635 of 1931, from an order of Babu Kamla Prasad, Subordinate Judge of Bhagalpur, dated the 29th August, 1931.