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should be ignored which might result in great hardships to the litigant public.

We, therefore, set aside the order of the learned Subordinate Judge and allow this appeal and direct that the application under Order XXI, rule 90, of the Code of Civil Procedure be disposed of according to law. The appellant is entitled to costs.

COURTNEY TERRELL, C.J. AND VARMA, J.

Appeal allowed.

APPELLATE CIVIL.

Before Macpherson and James, JJ.

1934.

October, 31.
November, 12.

HAFIZ ZEAUDDIN

v.

NAKAL SINGH.*

Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *section* 148*A*, *requirements of—suit for rent—landlord, how should proceed—absence of exact information—landlord, whether required to prosecute the suit for anything beyond his share.*

A suit under section 148A of the Bengal Tenancy Act, 1885, must, in form, be for the whole rent, and in substance for the separate share of rent in arrears; the whole body of landlords must be impleaded, with the allegation that the plaintiff has not been able to ascertain what, if any, rents are due to the former.

The plaintiff must sue for the whole amount of arrears which he knows to be due, whether to himself or to any body else; but when he does not know the actual amount due to other co-sharers, he should pray that if rent should be found payable to the other co-sharers a decree in their favour should be passed after realisation of deficit court-fee.

* Appeals from Appellate decrees nos. 43 to 57 and 335 to 349 of 1931, from a decision of Rai Bahadur Surendra Nath Mukharji, District Judge of Patna, dated the 19th June, 1930, reversing a decision of Maulavi Muhammad Abul Barkat, Subordinate Judge of Patna, dated the 29th June, 1929.

Ram Dhyan Singh v. *Pardip Singh*(1), *Rajgiri Singh* v. *Jadunath Ray*(2) and *Profulla Chandra Ghose* v. *Baburam Mandal*(3), referred to.

The plaintiff may have suspicion that some amount is due to his co-sharer, but unless the co-sharer supplies exact information as to the amount due, he is not required to prosecute the suit for anything beyond the amount due to himself and the requirements of section 148A are sufficiently met by the alternative prayer that if the co-sharers who are joined as defendants should make a claim, a decree should be made in their favour.

Appeals on behalf of the plaintiffs.

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

J. M. Ghosh, for the appellants in appeals nos. 43 to 57, *Khurshed Husnain* (with him *Sarjoo Prasad* and *H. R. Kazmi*), for the appellants in appeals nos. 335 to 349.

P. R. Das (with him *Ramnandan Prasad*, *G. P. Singh*, *B. B. Mukharji* and *Kapildeo Narain Lal*), for the respondents.

JAMES, J.—This is a batch of second appeals from the decision of the District Judge of Patna dismissing the plaintiffs' suits for arrears of produce rent. Hafiz Zeauddin and his co-sharers possess a share of eight annas five dams odd in the estate bearing tauzi no. 8427 on the revenue roll of Patna district. The other remaining share is possessed by a group of which Muhammad Yahya is now the principal member. The two groups of landlords have fallen out; and according to their statements contained in their plaints each of them refused to give information to the other regarding the amount of rent due. Each group of landlords accordingly instituted on the same date separate suits framed under section 148A of the Bengal Tenancy

(1) (1918) 4 Pat. L. J. 500.
(2) (1922) 4 Pat. L. T. 39.
(3) (1921) 34 Cal. L. J. 462.

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Act, each prosecuting his claim for his own share of the rent, and praying that if the co-sharers who were joined as defendants desired to state the shares payable to them, a decree should also be passed in their favour. The thirty analogous suits were consolidated and tried together with the result that all of them were decreed by the Subordinate Judge of Patna. On appeal his decision was reversed by the District Judge, who held that the suits as framed were not maintainable. One of the patwaris giving evidence had said:

"Enquiries were made about arrears from co-sharer maliks. They declined to join saying that they would file separate suits."

From this the District Judge inferred that each of the landlords knew that no rent had been paid to his co-sharer; so that if a suit was to be instituted under section 148A it would necessarily have had to be instituted for recovery of the whole sixteen annas of the rent. The landlords appeal from that decision.

Mr. Khurshed Husnain on behalf of the appellants in appeals nos. 335 to 349, whose arguments are adopted by the learned Advocate for the other appellants, argues that in these suits each group of landlords really was ignorant of what might be due to his co-sharers and that the statement of the patwari quoted by the learned District Judge does not justify the inference that each knew what was due to the other.

The principles upon which a suit under section 148A of the Bengal Tenancy Act is governed were laid down by this Court in *Ram Dhyan Singh* v. *Pardip Singh*(1); the suit must, in form, be for the whole rent, and in substance for the separate share of rent in arrears; the whole body of landlords must be impleaded, with the allegation that the plaintiff has not been able to ascertain what, if any, rents are due to the former. The question was again discussed in *Rajgiri Singh* v. *Jadunath Ray*(2) in which the

(1) (1918) 4 Pat. L. J. 500.
(2) (1922) 4 Pat. L. T. 39.

late Sir Basanta Mullick made the following observations: "This section requires, firstly, that the co-sharer shall sue to recover the rent due to all the co-sharer landlords in respect of the entire tenure or holding; secondly, that he must make all the remaining co-sharers parties to the suit, and thirdly, that he must state that he is unable to ascertain what rent is due for the whole tenure or holding or whether the rent due to the other co-sharer landlords has been paid, owing to the refusal or neglect of the tenant or of the co-sharer landlords defendants in the suit to furnish him with direct information on these points or on either of them. In such a case the plaintiff co-sharer will be entitled to proceed with the suit for his share only of the rent and a decree obtained in a suit so framed will be as effectual as a decree obtained by the sole landlord in a suit brought for the rent due to all the landlords." The plaintiff must sue for the whole amount of arrears which he knows to be due, whether to himself or to anybody else; but when he does not know the actual amount due to other co-sharers, he should pray that if rent should be found to be payable to the other co-sharers a decree in their favour should be passed after realisation of deficit court-fee—[*Profulla Chandra Ghose* v. *Baburam Mandal*(1)].

Mr. Khurshed Husnain argues that it cannot be said in these cases that there was no refusal or neglect of the co-sharer landlords of each suit to furnish the other co-sharers with direct information on the question of what rent was due and that since the plaintiffs in each of the suits were unable to obtain from their co-sharers direct information on these points they were entitled to frame their suits in the manner in which the suits have been framed under section 148A of the Bengal Tenancy Act. The learned District Judge says that there is nothing on the face of the plaints in these cases to indicate that the plaintiffs believed that the rent which was due to them formed the whole of the arrears due on the holdings; but the

(1) (1921) 34 Cal. L. J. 462.

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plaints of Hafiz Zeauddin say that their co-sharers refused to state the arrears; and those of Muhammad Yahya say that the plaintiffs believe that only the rent payable to the plaintiffs is due from the tenants.

JAMES, J.

Mr. P. R. Das argues reasonably that whatever may be stated in the plaints, the suits must fail if it appears from the plaintiffs' evidence that the averments of the plaints are false; but it does not appear to us that the statement of the patwari that enquiries were made about arrears from co-sharers and they declined to join saying that they would file separate suits warrants the inference that the co-sharer landlords who were impleaded as defendants had furnished the plaintiffs with direct information on the question of what rent was due. The plaintiff may have suspicion that some amount is due to his co-sharer, but unless the co-sharer supplies exact information as to the amount due he is not required to prosecute the suit for anything beyond the amount due to himself and the requirements of section 148A are sufficiently met by the alternative prayer that if the co-sharers who are joined as defendants should make a claim, a decree should be made in their favour. The learned District Judge remarks that the patwari did not say that any enquiry was made from the tenants themselves to find out whether any rent was due by them to the co-sharers; but it does not appear that he was asked any question on this point; and the reply which the tenants would have made to such an enquiry is sufficiently indicated by the fact that in their pleadings they alleged complete payment and that they endeavoured to prove this when they came to court. The landlord framing his suit under section 148A must sue for the whole of the amount of arrears which he knows to be due; but unless he definitely knows what is due to his other co-sharers his proper course is to make the alternative prayer as has been done in these cases. As I have said, the statement of the patwari quoted by the learned District Judge indicates that the co-sharers

did refuse information to one another and the mere statement that they would sue separately for anything that might be due cannot be treated as amounting to furnishing of direct information as to what actually was due. I consider, therefore, that these suits should be treated as having been properly instituted under section 148A and that the view of the learned Subordinate Judge was correct.

The learned Subordinate Judge did not accept the appraisement papers of the plaintiffs as representing the true outturn; but he found on the evidence that the outturn was something less than that claimed by the plaintiffs. The learned District Judge on appeal accepted in general the findings of fact of the learned Subordinate Judge on this point; but he remarked that in some instances the value of the landlords' share of linseed was allowed in which no claim for linseed was made in the plaint, and that kerao was not claimed in every case and he therefore disallowed all claims in respect of these crops. The fact that the value of linseed or kerao has not been claimed from every tenant does not justify the inference that no linseed or kerao was grown by any of them and this portion of the judgment of the learned District Judge cannot be supported.

In suit no. 66 (Subordinate Judge's serial no. 39), there was a money-decree against Abdul Rashid and other tenants, who all appealed to the District Judge. Abdul Rashid died during the pendency of the appeal; no substitution of heirs was made, and his appeal abated. In this second appeal it was suggested that this abatement involved the failure of the whole appeal, since the original decree was joint; while on behalf of the respondents it was suggested that the second appeal should fail because the heirs of Abdul Rashid were not brought on the record. The money decree against Rashid, so far as it may affect Rashid's heirs, stood when the appeal of Rashid abated; on that point the landlords had no cause to

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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.

1934.

November, 15.

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.