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they had or could have access to their property. In my view it matters not whether access can be given to them, because these buildings seriously infringe one of their most valuable rights, namely, a right of access to the highway along the whole length of their boundary. In my view these constructions are a serious infringement of the plaintiffs' rights, and that being so, the latter was entitled to insist on their removal.

For the reasons which I have given, I am satisfied that Dhavle, J. was right in holding that the municipality had exceeded their rights in leasing the property to defendant no. 1 and that the lease gave the latter no right to erect these structures to the prejudice of the plaintiffs. That being so, I would dismiss this appeal with costs.

FAZL ALI, J.—I agree.

Appeal dismissed.

S. A. K.

APPELLATE CIVIL.

Before Rowland and Chatterji, JJ.

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August 7, 8.

RAMA PRASAD

v.

MAHARAJA BAHADUR RAM RAN VIJAY PRASAD SINGH.*

Bihar Tenancy Act, 1885 (Act VIII of 1885), section 60, scope and applicability of—arrears of rent—proprietor's right to such arrears devolving on his heir—elder son registered under Bengal Land Registration Act, 1876 (Beng. Act VII of 1876)—suit for rent by elder son—tenant's plea that rent was due to younger son also, whether tenable.

* Appeal from Appellate Decree no. 32 of 1937, from a decision of Babu Nilkanth Tyagi, Subordinate Judge of Arrah, dated the 24th September, 1936, reversing a decision of Babu Jugal Kishore Prasad, Munsif of Buxar, dated the 7th August, 1935.

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The registered proprietor of an estate is not barred from obtaining a full decree for the rents due to the estate to the extent of the interest for which he is recorded notwithstanding that he may in reality have title to a smaller interest or even to no interest at all.

Shyama Charan Bhattacharjee v. *Mustafizar Rahman*(1), followed.

Nagendra Nath Basu v. *Satadalbasini Basu*(2) and *Rai Brindaban Prasad* v. *Rai Banku Bihari Mitra*(3), distinguished.

Section 60, Bihar Tenancy Act, 1885, is intended to apply to cases where rent has accrued due to the proprietor of an estate and is still unpaid. The fact that something happens to the proprietor will not affect the character of the rent or the nature of this liability, nor will rent cease to be rent due to the proprietor.

Srish Chunder Bose v. *Nachim Kazi*(4), referred to.

K was the proprietor of an impartible estate in which the defendants held an occupancy holding. On *K*'s death the estate devolved on his elder son *R*. The name of *R* was registered as sixteen annas proprietor under the Bengal Land Registration Act, 1876. *R* instituted a suit for arrears of rent for four years. The rent for the first three years had accrued due in the life-time of *K*. The defence was that *R* and *B*, the younger son, both were entitled to the rent of the first three years, and the suit for the whole rent by *R* alone was not maintainable.

Held, that the defence was barred under section 60 of the Bihar Tenancy Act, 1885.

Musammat Nand Kuer v. *Jodhan Mahton*(5), followed.

Rani Jagadamba Kumari v. *Wazir Narain Singh*(6) and *Aparna Debi* v. *Sree Sree Shiba Prasad Singh*(7), distinguished.

Appeal by the defendants.

(1) (1917) 41 Ind. Cas. 769.
(2) (1899) I. L. R. 26 Cal. 536.
(3) (1934) I. L. R. 14 Pat. 352.
(4) (1900) I. L. R. 27 Cal. 827, F. B.
(5) (1921) 6 Pat. L. J. 658.
(6) (1922) I. L. R. 2 Pat. 319; L. R. 50 Ind. App. 1.
(7) (1924) I. L. R. 3 Pat. 367.

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

The case was first heard by Wort, J. who referred it to a Division Bench by the following judgment:

WORT, J.—I propose to refer this matter to a Division Bench as a large number of cases of similar kind are before the Court at the present moment. The suit was for rent for the years 1338 to 1341 by the proprietor of an impartible estate. The late proprietor died in the year 1340. It is, therefore, contended by the defendants that, as the rent accrued due did not by accretion become part of the estate, the present registered proprietor is not entitled to recover. *Rani Jagadamba Kumari* v. *Wazir Narain Singh*(1) and *Aparna Debi* v. *Sree Sree Shiba Prasad Singh*(2) are clear authorities for the proposition that the rent which accrued due to the late proprietor is not recoverable by the present proprietor as such but by the legal representatives or, as in this case, by the whole of the joint family. Section 60 of the Bihar Tenancy Act is pleaded by the plaintiff. The question is—what is the meaning of the expression " where rent is due to the proprietor "? It is contended by Mr. Sinha on behalf of the plaintiff-respondent that it is merely descriptive and that it means " where rent is due to the proprietor, manager or mortgagee of an estate " in contradistinction to rent being due to any other class of persons, and that for the reason that the section proceeds to make provision for the recovery of the rent by the registered proprietor. I must say there is a lot to be said for that argument; but there is also something to be said for the other argument that where rent has not been due to the proprietor suing, section 60 of the Bihar Tenancy Act does not apply and the cases to which I have already referred are relied upon.

As I have already said, this matter will be referred to a Division Bench for decision.

On this reference.

D. N. Varma, for the appellants.

Sushil Madhab Mullick and *B. P. Sinha*, for the respondent.

ROWLAND, J.—This appeal, which at first came before a single Judge of this Court and was referred by him to a Division Bench, arises out of a suit for the rent of the years 1338, 1339, 1340 and twelve annas kist of 1341. The plaintiff is the proprietor of the Dumraon estate and the defendants are tenants

(1) (1922) I. L. R. 2 Pat. 319; L. R. 50 Ind. App. 1.
(2) (1924) I. L. R. 3 Pat. 867.

having an occupancy holding directly under the estate without the intervention of any intermediate tenure. The proprietor, at the time when the rents of the first three years in suit accrued due, was Maharaja Bahadur Kesho Prasad Singh, who died in September, 1933, and the estate, which is an impartible Raj, devolved on his elder son, the present plaintiff-respondent. There was also a younger son, Kumar Biswanath Prasad Singh, who did not succeed to the estate, but became, along with his elder brother, the heir to the personally acquired properties of the late Maharaja. The contention of the defendants was that rents due to the estate were such personal properties, and on the death of the Maharaja the persons entitled to those rents are the two brothers and not the elder brother only. Therefore, it is said, the elder brother alone cannot sustain this suit for the sixteen annas rents. The younger brother has not been impleaded, nor has he intervened. The Munsif gave effect to the contention of the defendants and gave the plaintiff a decree for the rent of twelve annas kist of 1341 only; but on appeal the Subordinate Judge has decreed the entire suit, taking the view that section 60 of the Bengal Tenancy Act precluded the defendants from resisting the suit of the plaintiff who is registered as sixteen annas proprietor by the plea that the rent is due to any third person.

The position taken up by the Subordinate Judge is supported by a very long series of authorities of which at this stage I may refer to *Musammat Nand Kuer* v. *Jodhan Mahton*(1) as the leading case of this Court. In this case it was held that the person registered as proprietor under the Bengal Land Registration Act, 1876, is entitled to recover rent from the tenants without any further proof of his title to it, and the tenants are not entitled to plead that the registered proprietor is not in fact the

(1) (1921) 6 Pat. L. J. 658.

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proprietor and that the rent is due to a third person. The contention of the defendants was based on *Rani Jagadamba Kumari* v. *Wazir Narain Singh*(1) and *Aparna Devi* v. *Sree Sree Shiba Prashad Singh*(2). In the former of these cases which was decided by their Lordships of the Privy Council, the dispute was between a widow, who was the personal heir of the late holder of an impartible estate, and a somewhat distant agnate who succeeded to the estate itself by primogeniture, and the decision was that certain moveable and other properties which had been self-acquired by the late Raja were to be regarded as not incorporated in the estate, and therefore, should pass to his widow and not to the new holder of the estate. In the Patna decision a Bench of this Court applied the principle to rents which had accrued due during the life-time of the last holder of an estate, and it was held that the person entitled to moneys due on account of rent of this kind was the widow, that is to say, the personal heir and not the agnate on whom the estate devolved. In neither of those cases was there any question of section 60 of the Bengal Tenancy Act. The latter case, it is true, dealt with certain rents, but they were not agricultural rents; they were rents and royalties in respect of coal mines, etc., and were governed by the Transfer of Property Act. It may be conceded that any realizations made by the new proprietor on account of rents accrued due in the life-time of his father are not and will not be his exclusive property and that his brother is entitled to share in the enjoyment of any such receipts. But the decisions under section 60 of the Bengal Tenancy Act make it quite clear that the registered proprietor of an estate is not barred from obtaining a full decree for the rents due to the estate to the extent of the interest for which he is recorded notwithstanding that he may in reality have title to a smaller interest or even to no

(1) (1922) I. L. R. 2 Pat. 319; L. R. 50 Ind. App. 1.
(2) (1924) I. L. R. 3 Pat. 367.

interest at all. For instance, in *Shyama Charan Bhattacharjee* v. *Mustafizar Rahaman*(1), in spite of a finding of fact by the Courts below that the plaintiff was not entitled to get his name registered as heir of Naba Chandra nor in respect of the third share of Ram Kant the High Court applied section 60, held that the above plea could not be entertained in a rent suit and gave the plaintiff a full decree. It is not necessary to multiply the citation of decisions which are very numerous.

Mr. D. N. Varma for the appellants contended that the plea excluded by section 60 was a plea that the rent was due to any third person as proprietor. In support of this he referred us to cases in which rents which had accrued due to the proprietor of an estate became in certain circumstances payable to a person who was not the proprietor. It has been held in some cases that such a person was not required to be registered and was not barred by section 78 of the Bengal Land Registration Act from recovering what was due to him. The decision in *Nagendra Nath Basu* v. *Satadalbasini Basu*(2) was a case in which the arrear of rent fell due in the life-time of a registered proprietor, and on his death, the debt of course became the property of his heirs. The latter alienated the property within two months, but without assigning the arrears of rent. They were permitted to sue for those arrears, the Court observing that they were not suing as proprietors but as the legal representatives of the late registered proprietors, and section 78 does not apply to such a case. This is a stronger case than the decision of this Court in *Rai Brindaban Prasad* v. *Rai Banku Bihari Mitra*(3), in which the suit had been instituted by registered proprietors one of whom died during the pendency of the suit. It was held that the fact of his heirs not

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yet having got registration of their names did not bar them under section 78 of the Bengal Land Registration Act from obtaining a decree which they claimed in the capacity of his heirs and representatives. But these cases were not cases under section 60 of the Bengal Tenancy Act at all. They fell to be decided under section 78 of the Bengal Land Registration Act. What we have to see here is not whether Kumar Biswanath Prasad Singh might have realised the money from the defendants if he had claimed it from them before they had made any payment to the Maharaja or had been sued by the latter, but what the position is in a suit instituted by the Maharaja in which the defendants are attempting to plead that the rent which they have not paid is due to the Kumar Shaib. Mr. D. N. Varma suggested that the claim for back rents was not really a suit for rent falling within the Bengal Tenancy Act but was a money claim, that what was due to the Kumar Sahib not being due to him as a proprietor was not to be regarded as rent. The argument on the face of it does not appear convincing and it seems quite impossible to accept it in face of the Full Bench decision of the Calcutta High Court in *Srish Chander Bose* v. *Nachim Kazi*(1). That, it is true, was not the case of a legal representative of a deceased proprietor, but it was an assignee of arrears of rent from a proprietor. The contention was raised that the claim was not a claim for rent and was not excepted from the cognizance of a Court of Small Causes. The Full Bench negatived the contention. It was pointed out that the debt in its inception was clearly in respect of that which is known as rent, and the character which it had while it belonged to the assignor was not changed when the right to it passed to the assignee. But the main argument on which Mr. Varma laid most stress was that the opening words

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(1) (1900) I. L. R. 27 Cal. 827, F. B.

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of section 60 did not apply to the rent claimed in this suit. The words of the section are—

"Where rent is due to the proprietor, manager or mortgagee of an estate."

First he contended that what is due is not rent. This argument fails in view of what I have already said. The next argument was that it is not "due to the proprietor" of the estate because it belongs to the legal representatives of the late proprietor. Mr. Varma had to choose between taking the position that the plaintiff could recover as much of the rent as is due to himself but not what is due to his brother, and taking the position that the whole claim in respect of the years 1338, 1339 and 1340 should be dismissed. He adopted the latter contention: but it has implications which make us unable to accept it. If it were well founded, it would apply even in cases where a proprietor is succeeded by a sole heir and would lead to the conclusion that even such a person in suing for back rents cannot rely on section 60 in support of his claim. It would require us to draw a highly artificial distinction between rent due to a proprietor as such and rent due to the person who is the proprietor, but due to him as the successor in interest of his predecessor.

Had Mr. Varma's argument taken the other form, that the claim must fail to the extent of the share of Kumar Biswanath Prasad Singh, it would be equally untenable. For we should have the case that some rent was due to the proprietor and some of it was alleged to be due to a third person. That position is clearly within the terms of section 60. A plain reading of the section indicates that it is intended to apply to cases where rent has accrued due to the proprietor of an estate and is still unpaid. The fact that something happens to the proprietor, will not, I think, affect the character of the rent or the nature of this liability, nor will the rent cease to be rent due

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to the proprietor. The contrary case to which section 60 is meant not to apply is the case where rent is due to a tenure-holder by an under-tenure-holder or raivat, or due to a raiyat by an under-raiyat. Now, it is not disputed that the plaintiff has got himself registered as the sixteen annas proprietor of the estate, and under section 60 he is competent to give a sufficient discharge for all rents due to the estate or to its proprietor as such. The section goes on to say that—

"the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person."

Mr. Varma's concluding argument was that this only bars a plea that the rent is due to some third person as proprietor; the answer is that those words of limitation are not to be found in the section itself; it bars a plea that the rent is due to any third person. To the argument that if the rent in fact belongs to some third person, the section does not apply at all, the answer is that on this construction the whole section would be emptied of meaning. The plea which section 60 bars would only be barred if it fails on the merits. This is contrary to a very long series of decisions.

In my view the plea of the appellants is barred by section 60 and the decision of the Subordinate Judge should be affirmed and the appeal dismissed with costs.

CHATTERJI, J.—I agree.

The whole controversy in this appeal relates to the true construction of section 60 of the Bihar Tenancy Act, particularly with reference to the opening words—

"where rent is due to the proprietor, manager or mortgagee of an estate".

Mr. D. N. Varma for the appellants contends that these words imply that the section requires that the person to whom the rent is due must be the proprietor, manager or mortgagee of an estate. In the present case, it is said, the rents for the year 1338-40 which became payable to the late Maharaja devolved on his death not as part of his ancestral impartible estate on his eldest son, the present plaintiff, but as his separate property on his two sons and are therefore, due to them not as proprietors but as legal representatives of the late proprietor. At any rate the younger son admittedly not being a proprietor, his share of the rent cannot be said to be due to a proprietor. Consequently section 60 cannot apply. The construction thus sought to be put on the section is, in my opinion, erroneous. As I read the section, it seems to me that what it really requires is that the tenant should hold his land directly under the proprietor of an estate as distinguished from a tenure-holder or any other intermediate landlord. To accept Mr. Varma's contention, it would be necessary to decide who is really entitled to the rent sued for, but that is exactly the question which the Court is forbidden by the section to entertain. To make the section applicable it is only necessary to see whether the tenancy is held under a proprietor, manager or mortgagee of an estate. If this condition is satisfied, the registered proprietor suing for rent shall be deemed to be the person to whom the rent is due and no plea to the contrary by the tenant will be permissible. Admittedly the plaintiff in this suit is the registered proprietor and, therefore, section 60 bars the plea that he alone is not entitled to maintain this suit. The fact that the rents for the years 1338-40 accrued due during the life-time of the late proprietor makes no difference.

Appeal dismissed.

K. D.