

routes, or, to use the language of this Court in the case of *Umesh Chunder Dutta v. Soonder Narain Deo* (1), "to obtain some order of the Court in furtherance of the execution of the decree." I do not regard the removal from the decree-holder of the prohibition to bid as coming within the meaning of the words. The point already reached in the execution of the decree is a sale of property; and the removal of the prohibition does not in my opinion carry the Court to any further point along the path of execution.

1903
A FBIL 2
8, 6.
—
APPELLATE
CIVIL.
—
30 C. 761=8
C. W. N. 251.

Appeal allowed.

30 C. 773 (=8 C. W. N. 193.)

[773] APPELLATE CIVIL.

PARASHMONI DASSI v. NABOKISHORE LAHIRI.*

[13th and 21st May, 1903.]

Land Registration—Land Registration Act (Bengal Act VII of 1876) ss. 42, 78—Co-sharer's interest by amicable settlement—Registration of proprietor's share—Partition Act (Bengal Act V of 1897) s. 12.

The Land Registration Act (B. C. VII of 1876) requires the registration by the various proprietors of their shares in the estates only, and does not seem to contemplate a registration of shares in separate mouzahs in the estates. The provisions of section 42 of the Act have therefore no application to the case of a co-sharer who, by an amicable arrangement between the co-sharers, has been placed in possession of a larger share than his registered share in some mouzahs, and of a less share or no share in others, so long as the total interest which he holds in all the mouzahs represents his registered interest in the whole estate.

[Fol. 90 Cal. 880; 64 I. C. 738. Ref. 38 Cal. 512=10 I. C. 463.]

SECOND APPEAL by defendant, Parashmoni Dassi.

This appeal arose out of an action brought by the plaintiff to recover an eight-anna share of rent from the defendants in respect of a jote held by them in mouzah Giriasa. The allegation of the plaintiffs was that they and one Promoda Debi were the proprietors of an one-anna odd ganda share in estate No. 136, Pergana Susang; that under an amicable arrangement with their co-proprietors they and Promoda Debi were in possession of the whole of Giriasa, one of the mouzahs in the estate, as their *khanabari*; that they collected their eight-anna share of the rents from the tenants in the mouzah up to 1301 B.S., and that the defendants not having paid their rents, the suit was brought to recover arrears for the years 1301 to 1304 B.S. The defence mainly was that the plaintiffs could not recover more than one-anna odd ganda share of the rent, that being the share in respect of which their names were registered in the estate; they also disputed the amount of the *jama* claimed.

[774] The Court of First Instance gave the plaintiffs a modified decree. The plaintiffs appealed to the Subordinate Judge of Mymensingh, who set aside the judgment and decree of the First Court, and decreed the plaintiff's claim in full.

Dr. Ashutosh Mookerjee (Babu Biraj Mohun Majumdar with him) for the appellants. Under s. 78, paragraph 2 of the Land Registration Act, the plaintiff is not entitled to collect rent for any share in excess of the

* Appeal from Appellate Decree No. 2083 of 1900, against the decree of Dwarka Nath Mitter, Subordinate Judge of Mymensingh, dated June 28, 1900, reversing the decree of Jogesh Chunder Mukerjee, Munsif of Netrokona, dated March 13, 1899.

(1) (1889) I. L. R. 16 Cal. 747.

1903
MAY 18, 21.

APPELLATE
CIVIL.

30 C. 773—8
C. W. N. 193.

share for which he is registered. Plaintiff is not entitled to succeed by showing that although his name is registered in respect of a certain share of the entire zemindari, he is entitled by virtue of an amicable arrangement with his co-sharers to collect a larger share of the rents from the tenants of a particular village. To allow the plaintiffs to do so would be to defeat the object of the law and nullify the protection afforded to the tenants. There is nothing in the Act to prevent the plaintiff from getting himself registered in respect of different shares in the several villages included within the estate. S. 42 of the Act lends support to my contention.

Babu Jogesh Chunder Roy for the respondent. The second paragraph of s. 78 of the Land Registration Act contemplates a case in which a tenant is liable to pay rent to more than one proprietor holding in common tenancy. It is therefore no bar to a co-sharer in a case like the present where by an amicable arrangement the whole body of the proprietors is not entitled to realise rent from all the tenants, to get rent in respect of the share of a mouzah which he is in possession of. Such an amicable arrangement is not precluded by s. 78 of the Act. Moreover, the Act does not contemplate the possibility of a proprietor getting himself registered in respect of specific lands or share in specific lands comprised in the estates.

Dr. Ashutosh Mookerjee in reply.

Cur. adv. vult.

BRETT AND MITRA, JJ. The plaintiffs sued to recover from the defendants an eight-anna share of the rent due from them for the years 1301 to 1304 in respect of a jote held by them in mouzah Giriassa.

[775] The plaintiffs and one Promoda Debi are the proprietors of an one-anna odd ganda share in estate No. 136, Pergana Susang, and their case is that under an amicable arrangement with their co-proprietors they and Promoda Debi are in possession of the whole of Giriassa, one of the mouzahs in the estate, as their *khanabari*. They further allege that they have collected an eight-anna share of the rents from all the tenants in the mouzah for nine or ten years down to 1301, and they therefore sue to recover rents for the years in suit.

The defendants disputed the amount of *jama* claimed, and further pleaded that plaintiffs were not entitled to recover from them more than 1a. 10g. 1c. 1ka. share of the rent, that being the share which they held in the estate.

The Munsif found that the *jama* of the defendants was that stated by the plaintiffs, but he accepted the latter plea put forward by the defendants and gave the plaintiffs a decree for an 1a. 10g. 1c. 1ka. share only of the rent against the defendants.

On appeal the Subordinate Judge set aside the judgment and decree of the Munsif, and decreed the plaintiff's claim with costs. The defendants have appealed.

A preliminary objection was taken under section 153 (a) of the Bengal Tenancy Act to the competency of the appeal on the ground that the rent which the plaintiff sought to recover was under 100 rupees, and the judgment of the Full Bench in the case of *Narain Mahlon v. Manofi Pattuk* (1) laid down that the provisions of that section applied to the case of rent payable to one of several co-sharer landlords who collected his share of the rent separately. In this case, however, the question

(1) (1890) I. L. R. 17 Cal. 489.

raised and determined was not merely the amount of rent payable to the co-sharer, but whether he had a title to recover the eight-anna share of the rents of mouzah Giriassa as he alleged. This comes under the exception mentioned in the section, and the objection fails.

1903
MAY 13, 21.
—
APPELLATE
CIVIL.

In support of the appeal the learned vakil for the appellants relies on the second part of section 78 of the Land Registration Act of 1876, and contends that under its provisions the defendant is not bound to pay any co-sharer more than the amount which [776] bears the same proportion to the whole of his rent as the extent of the interest in respect of which that co-sharer is registered bears to the entire estate. The plaintiff admittedly is only registered as proprietor in respect of an 1a. 10g. 1c. 1ka. share in estate No. 136, in which mouzah Giriassa is situated, and the learned vakil contends that the Munsif was right in holding that the plaintiff could only recover that share of the rent from the defendant and that the decision of the Subordinate Judge to the contrary was wrong. He further relies on the provisions of section 42 of the same Act, and contends that if the plaintiff by any arrangement with his co-sharers came into possession of an eight-anna share of mouzah Giriassa, he was bound to have had his name registered in respect of that share in that mouzah before he could recover an eight-anna share of the rents from the tenants. The contention appears not to have been raised in any suit before, and there can be no doubt that if it be sound, its effect would be very far-reaching in Bengal, where arrangements similar to that relied on by the plaintiff are very common.

30 C. 773=8
C. W. N. 193.

We do not, however, consider that in this case we are called on to determine the broad proposition which has been put forward. Both the Lower Courts have found that there was an amicable arrangement between the co-sharers by which the plaintiffs were placed in possession as their *khanabari* of an eight-anna share of mouzah Giriassa, and that they collected an eight-anna share from the tenants for eight or nine years up to 1301. The Munsif held, relying on a document produced by the defendant, that in that year there was a fresh settlement between the plaintiff and defendant, by which the plaintiff agreed thenceforward to collect only his registered share of the rent, but the Subordinate Judge has found that document not to be genuine, and has held that there was no such fresh settlement. With that finding we cannot interfere.

The Act requires the registration by the various proprietors of their share in the estates only, and does not seem to us to contemplate a registration of shares in separate mouzahs in the estates, and we hold therefore that the provisions of section 42 of the Land Registration Act have no application to the case of a co-sharer who, like the plaintiff, has, by an amicable arrangement [777] between the co-sharers, been placed in possession of a larger share than his registered share in some mouzahs and of a less share or no share in others, when the total interest which he holds in all the mouzahs represents his registered interest in the whole estate. Section 12 of the Partition Act clearly contemplates that such a partition by amicable arrangement may be made.

Whether the tenants would be bound without their consent by such an arrangement is not a question which arises in this case, for it is evident that the defendant and other tenants acquiesced in the arrangement and paid rents in accordance therewith for eight or nine years,

1903
MAY 13, 21. prior to the period for which the rents in suit are claimed. And the defendant having so acquiesced, we are of opinion that he is now debarred from disputing the plaintiff's right to a half-share of the rent and from relying on the provisions of section 78 of the Land Registration Act.

30 C. 773=8
C. W. N. 193. In this case a lessee of the registered proprietor is in possession of the remaining share of the estate, and he is clearly endeavouring by setting up the defendant to put forward his defence in this case to annul the previous amicable arrangement among the co-sharers.

We hold therefore that the judgment and decree of the Subordinate Judge is right, and dismiss the appeal with costs.

Appeal dismissed.

30 C. 778 (=8 C. W. N. 357.)

[778] APPELLATE CIVIL.

AHSANULLA v. MANJURA BANOO.*

[6th and 15th May, 1903.]

Arrears of cess—Cess Act (Bengal IX of 1880) s. 99—Cess whether a charge on an estate.

The amount of cesses payable to a Collector under the Cess Act (IX B. C. of 1880) is not a charge on the estate in respect of which they are due.

Shekhat Hosain v. Sasi Kar (1) referred to; *Chaitraput Singh v. Grindra Chunder Roy* (2) discussed.

[Ref. 14 C. L. J. 292=11 I. C. 465=16 C. W. N. 351. Foll. 1 Pat. 218.]

SECOND APPEAL by the plaintiff, Nawab Ahsanulla.

This appeal arose out of an action brought by the plaintiff to recover a certain sum of money from the defendants, Manjura Banoo and others. The allegation of the plaintiff was that revenue-paying taluk Hussainaddi of the Tipperah Collectorate formerly belonged to one Golam Mowala, the husband of defendant No. 1 and father of defendants Nos. 2 and 3; that in execution of a mortgage decree obtained against Golam Mowala, the said taluk was sold and purchased by him on the 16th August 1897, and the sale was confirmed on the 5th March 1898; that for arrears of road cess due up to March 1897 the Collector of the district filed a certificate against the defendants, but no property belonging to the debtors having been found, the Collector took proceedings under s. 99 of the Cess Act; that thus he was obliged to pay the cess due, and hence was this suit to recover the said amount from the defendants.

The defence mainly was that the payment being a voluntary one, the plaintiff was not entitled to be reimbursed; and that the cesses being a charge on the estate, the plaintiff was bound to pay.

[779] The Court of First Instance having held that the payment made by the plaintiff was voluntary dismissed the suit. On appeal, the Subordinate Judge of Tipperah, holding that although the payment by the plaintiff was not voluntary, yet the cesses being a charge on the estate the plaintiff was bound to pay, confirmed the decision of the first Court.

Dr. Ashutosh Mookerjee (Babu Surendra Nath Guha with him). The question in this case is whether cess is a charge upon the property. Although the Collector took proceedings under s. 99 of the Cess Act, yet

* Appeal from Appellate Decree No. 2250 of 1900, against the decree of Sham Kishore Bose, Subordinate Judge of Tipperah, dated Aug. 27, 1900, affirming the decree of Ram Lal Das, Munsif of Comilla, dated Dec. 22, 1899.

(1) (1892) I. L. R. 19 Cal. 733.

(2) (1880) I. L. R. 6 Cal. 389.