

both the curious inadvertence admitted by the Subordinate Judge, and the necessity of letting in the fresh evidence, had worked upon his mind as reasons for granting the review; but either construction is possible, and, that being so, I think we ought to adopt that one which at once favours a full inquiry, and enables us to support the decision of the Court below.

I therefore concur in dismissing the appeal, but I think this is not a case in which the appellant ought to be ordered to pay costs in this Court.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

UPENDRA MOHAN TAGORE AND OTHERS (PLAINTIFFS) v. THANDA DASI AND ANOTHER (DEFENDANTS.)

1869  
July 31.

*Hindu Law—Lessor and Lessee—Act X. of 1859, s. 27—Division of Rent or Tenure.*

The widow of a paternal uncle is, according to Hindu law, no heir to her nephew.

The lessor is not bound to recognise the title of any one except the person with whom he deals, whatever that title may be as between the lessee and the members of his family.

Under section 27, Act X. of 1859, no division of tenure or distribution of rent is valid, or binding, without the consent in writing of the landlord.

Baboos *Srinath Das* and *Kali Prosonno Dutt* for appellants.

Baboo *Bangsi Dhar Sen* for respondents.

NORMAN, J.—This is a suit, which was brought by the late Prosonno Coomār Tagore, for possession of certain lands, held by one Haraprasad under a lease from the 30th Bhadra 1266, expiring in Baisakh 1271. The defendant is the widow of Subalram, an uncle of Haraprasad, and she claims to retain possession of the jote. The Judge finding that it is an ancestral jote, has dismissed the suit.

The facts, as appearing in the written statement of the defendant herself, are, that originally there were five brothers, Rupnarayan, Gaur Mohan, Safalram, Subalram, and Lakhan;

\* Special Appeal, No. 707 of 1869, from a decree of the Officiating Judge of Rungpore, dated the 31st December 1868, affirming a decree of the Mooniff of that district, dated the 26th October 1868.

1869  
BIBARI LAL  
NANDI  
v.  
SRI MATI TRAI  
LAKH M. YI  
BARMANI.

1869

UPENDRA  
MOHAN  
TAGORE  
v.  
TMANDADASI.

that the property now in dispute was originally taken under a patta granted to Rupnarayan, and after his decease it was settled with Lakhan. After the death of Lakhan, namely in 1266 (1859), Haraprasad, who was the son of the second brother Gaur Mohan, took a lease in terms which appear from the kabuliat of Haraprasad, which has been put in: "I take for five years a temporary lease of a limited jote. To the end of the term I will pay rent according to kists named; and after the term, on certain conditions, until a fresh settlement is made." Haraprasad having died, the plaintiff entered on the jote. The defendant brought a suit under clause 6, section 23 of Act X. of 1859, and obtained a decree restoring her to possession: upon which the plaintiff brought this suit to establish his title to possession of the land upon the ground that the rights of Haraprasad in it had ceased. We think that the plaintiff is entitled to recover.

The defendant alleges herself to be the heiress of Haraprasad; but that she certainly is not, the widow of an uncle not being capable, under any circumstances, of inheriting to her own nephew.

As between the zemindar and persons to whom he grants leases (whatever may be the rights of the members of the family of the lessee of the lands so granted as between themselves) we think it plain that the zemindar cannot be compelled to recognise the title of any one beyond the persons with whom he deals, and to whom he looks for rent. And the zemindar having given leases to Rupnarayan, Lakhan and Haraprasad could not be compelled to recognise the defendant, the widow of Subalram, as having any title to, or share or interest in, the property, albeit defendant as heiress of her husband could only be entitled to a fractional interest in the jote. But a landlord is not compelled to recognise or give effect to the division of the tenure.

By section 27 of Act X. of 1859, it is provided that "no zemindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any intermediate tenure, nor shall any such division or distribution of rent be valid and binding

“ without the consent in writing of the zemindar or superior  
“ tenant.”

The decree of the lower Appellate Court must be reversed,  
and the plaintiff's suit decreed with costs in all the Courts.

1869

UPPENDRA  
MOHAN  
TAGOR  
”

THANDA DACE.

*Before Mr. Justice Kemp and Mr. Justice Markby.*

HIRA CHAND BANERJEE (ONE OF THE DEFENDANTS) v. SHAMA  
CHARAN CHATTERJEE (PLAINTIFF) AND OTHERS (DEFENDANTS).\*

1869

• Aug. 4.

*Jurisdiction—Suit for closing a New Road and opening an Old One—Onus.*

In a suit for closing a new road opened by the defendants through the land of the plaintiff, and for opening an old road which had been closed by the defendants, *held*, by MARKBY, J., that the question of opening or closing a public road belongs to the Criminal Court, and not to the Civil Court.

*Held*, that the only question which can be tried in the suit is whether the defendants have trespassed on the land of the plaintiff by opening a road. The *onus* is upon the plaintiff to prove that the land belongs to him.

Baboo *Girija Sankar Mozoomdar* and *Nabakrishna Mookerjee*  
for appellant.

The respondent did not appear.

MARKBY, J.—In this case the plaintiff alleged in his plaint that the defendants had closed an old road which had been used for men and cattle, and had opened a new road through lands belonging to the plaintiff; and he prays that the old road may be re-opened and the new road closed. The defendants in answer to this say, that the land in which the new road has been opened belonged to them, and that no one is injured by the diversion of the road. The first Court dismissed the suit, but the second Court made a decree declaring the new road to be within the appellant's premises, that is the plaintiff's premises, and directing that it should be closed, and that the old road should be restored to its former condition. What exactly is meant by this part of the decree I do not understand. Who was to open the old road and who was to close the new one, is not said. But I am quite

\* Special Appeal, No. 284 of 1869, from a decree of the Officiating Deputy Commissioner of Manbhoom, dated the 9th November 1868, reversing a decree of the Officiating Moonsiff of that district, dated the 11th June, 1868.