

ing of the word "proprietor," as used in Beng. Act VI of 1862, has been defined in *Mahomed Bahadoor Mojoomdar v. Rajah Raj Kishen Singh* (1), in *Moolook Chand Muntul v. Modhoosoodun Bachusputty* (2), and in *Shoorendro Mohun Roy v. Bhuggobut Churn Gungopadhy a* (3). A shareholder cannot sue

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SANTIAM
PANJA
v.
BYCUNT
PANJA.

(1) *Ante*, p. 401.

(2) *Ante*, p. 398.

(3) *Before Mr. Justice Kemp and Mr. Justice Glover.*

SHOORENDRO MOHUN ROY AND
OTHERS (PLAINTIFFS) v. BHUGGO-
BUT' CHURN GUNGOPADHYA
AND OTHERS (DEFENDANTS).*

The 8th August 1872.

*Beng. Act VI of 1862, s. 10—Right of a
Co-sharer to Measurement.*

Baboos *Sreenath Doss, Shoshechhooson Sein, and Girjasunker Mojoomdar* for the appellants.

Baboos *Nulit Chunder Sein and Issur Chunder Chuckerbutty* for the respondents.

THE judgment of the Court was delivered by

GLOVER, J.—These appeals have been heard together, and one decision will govern both cases. The matter has been extremely complicated by the action of the Courts below, and it is with some difficulty that we have been able to get to the real state of the case. The suit is by a 2-annas co-sharer in an estate called Rooil, for a measurement of the lands under the provisions of s. 10 of Beng. Act VI of 1862, his ground of action being in accordance with that section that he wishes to know, and cannot ascertain who are the persons liable to pay rent in respect of the lands of his estate unless a measurement is made. The Collector in the first instance, notwithstanding the objections

which were made by the opposite party that such a suit would not lie, ordered the measurement to be made. The Judge on appeal confirmed that order, and sent the papers back that an ameen might be deputed to make the measurement. Sometime afterwards a different Collector took up the case, and expressed a very decided opinion that it ought never to have been brought under Beng. Act VI of 1862 at all; he ordered however the ameen to go out and measure the lands, considering himself bound, as no doubt he was, under the circumstances by the decision of the Judge's Court. The ameen thereupon went and measured the lands, both parties objected to his measurement on various grounds, and the Collector gave a decision, which was partly in favor of each. The case then went on appeal to the Judge, who upheld the decision of the Collector, and it is against this decision that the present appeals are made. The only point necessary for us to consider in special appeal is the point of law, namely, as to whether a co-sharer in an undivided estate or tenure is entitled to apply under s. 10 of Beng. Act VI of 1862 for a measurement.

We are clearly of opinion that he is not so entitled. The words of the section are that "if a proprietor of an estate or tenure or other person entitled to receive the rents of an estate or tenure." We understand "proprietor" to mean either the sole owner of the estate, or the corporate body of owners acting together for that purpose, or any person or body of persons having the right to collect the entire rents of the entire estate. There is nothing in the

* Special Appeals, Nos. 174 and 276 of 1872, from the decrees of the Judge of Dacca, dated the 30th September 1871, modifying and affirming the decrees of the Collector of that district dated the 30th June 1871.

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for rent or enhancement of rent, or for a kabuliat without joining his co-sharers. [MITTER, J.—That rests on a different principle; a shareholder may not have the rights you mention, and yet may be well entitled to know the quantity of land which forms his estate.] Separate measurements at the instance of each shareholder would be harassing to the tenants. [MITTER, J.—It is not necessary that the tenants should attend at the measurements.] The proper course for a shareholder to pursue is to obtain a partition, and thus become sole proprietor of his share.

Baboo *Bhojrub Chunder Banerjee* in reply.—In the case of *Moolook Chand Mundul v. Modhoosoodun Bachusputty* (1), a distinction was drawn between cases arising under ss. 9 and 10 of Beng. Act VI of 1862. Under the circumstances I submit that the case ought to be referred to a Full Bench. The plaintiffs could not obtain a partition as they are patnidars of a twelve-

section which entitles a fractional shareholder in the property against the wishes of the great mass of his co-sharers to harass every ryot on the estate by insisting upon a measurement of the lands. The point in question has on more than one occasion been decided by Division Benches of this Court. In the case of *Moolook Chand Mundul v. Modhoosoodun Bachusputty* (1), it has been held that the word "proprietor" implies the sole proprietor or the whole body of proprietors of the land for the measurement of which application is made: and again in the case of *Mahomed Bahadoor Mojoondar v. Rajah Raj Kishen Singh* (2), it was held that an applicant under s. 10 of Beng. Act VI of 1862 must be "the proprietor of the estate," and not a shareholder only in the proprietary body. Another objection and an equally fatal one to the plaintiff's case would be that a party applying for a measurement must do so because he cannot ascertain who are the persons liable to

pay rent to him. Now this is an estate which has been settled for very many years, the mehal was measured when it was settled, and, as observed by the Collector, there was a full record of the tenures of the estate, so that there could have been no difficulty in ascertaining from the thakbust proceedings what were the holdings of every particular ryot on the estate. In every point of view, therefore, the decision of the Court below is erroneous. It is true that the Judge has not now decided the case on this particular point, but it is equally true that the objection was taken by the objector before him from the very beginning of the case, and it is on this point that the appeal is preferred.

We reverse the decision of the Courts below, and reject the application for measurement.

Special appeal No. 174 will therefore be decreed, and special appeal No. 276 will be dismissed with costs.

(1) *Ante*, p. 398

(2) *Ante*, p. 401.

anna share, and the remaining four-anna share is in the possession of the original shareholders.

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Cur. adv. vult.

The judgment of the Courts was delivered by

MITTER, J.—In this special appeal we think we are bound to follow the principle laid down in the decisions in *Moolook Chand Mundul v. Modhoosoodun Buchusputty* (1) and *Shoorendro Mohun Roy v. Bhuggobut Churn Gungopadhya* (2). It has been argued that these were cases decided with special reference to the provisions of s. 10 of Beng. Act VI of 1862 and s. 38 of Beng. Act VIII of 1869. But the principle of those decisions appears to be equally applicable to a case like the present, which is brought under s. 37 of the last mentioned Act. The same words “proprietor of the estate or tenure” which occur in s. 38 of Beng. Act VI of 1862 also occur in s. 25 of Beng. Act VIII of 1869; and as it is by s. 25 that the right to measure referred to in s. 37 is to be determined, the distinction relied upon by the appellants must necessarily fall to the ground.

We reject the special appeal with costs.

Appeal dismissed.

(1) *Ante*, p. 398,

(2) *Ante*, p., 403.