

Singh (1) on which that Court also relied, are decisions on s. 10 of Beng. Act VI of 1862, which section corresponds with s. 38 of

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ment sections are concerned, merely an extension of s. 26, Act X of 1859, and that by s. 21 (Beng. Act VI of 1862), it is to be read with and taken as part of the earlier Act. I entertain no doubt that the proper construction of "estate or tenure" in s. 10 is one that limits these terms to certain specific lands, the whole of the rents of which go to the person presenting the petition.

The provisions of s. 108 of Act X of 1859 (now s. 64 of Beng. Act VIII of 1869) also show clearly that a single shareholder's rights under the Act are by no means co-extensive with those of a sole proprietor or body of joint proprietors. He cannot sell the tenure on which the default accrued at all until he has proceeded against the moveable property of the defaulter and brought it to sale (if any be found), and when he does sell the tenure, he cannot sell it under s. 105 of Beng. Act VIII of 1865, but can only sell rights and interests of the defaulter under s. 110 of Act VIII of 1869.

I entertain no doubt that in the 10th section of Beng. Act VI of 1862, the word "proprietor" must be read as implying the sole proprietor or whole body of proprietors of the whole of the land for the measurement of which application is made.

(1) *Before Mr. Justice E. Jackson and Mr. Justice Ainslie.*

MAHOMED BAHADOOR MOJOOM-DAR AND ANOTHER (DEFENDANTS)
v. RAJAH RAJ KISHEN SINGH
(PLAINTIFF).*

The 15th May 1871.

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

Baboos *Romesh Chunder Mitter* and *Heim Chunder Banerjee* for the appellants.

Mr. *R. T. Allan* and Baboos *Unnod-aprosaj Banerjee* and *Shoshee Bhoosun Sein* for the respondent.

THE judgment of the Court was delivered by

JACKSON, J.—I do not agree with the Judge in the view he has taken of the law, s. 10 of Beng. Act VI of 1862. In the first place, I think it is most important that the applicant to the Collector under this section should prove that he "cannot ascertain who are the persons liable to pay rent in respect of the lands, or any portion of the lands comprised in his estate, and that on that account he is entitled to measure the lands comprised in his estate." These are the words of the law, and they show the state of facts upon which alone there can be an application to the Collector, and upon which alone the Collector can assist the applicant. The Judge admits that there was no enquiry made to ascertain whether any such state of facts existed. One of the tenants of the estate who objected to the application appeared and alleged that there was no truth in the averments made in the application, and that the applicant had long been in possession, and could not be in ignorance of the lands or tenures comprised in the estate, and that the application was only made to harass the tenants. But still no issue was fixed upon the point, and no enquiry made regarding it. The result is that the Collector had not jurisdiction to act in the matter, and that all the proceedings must be set aside as invalid. It is worthy of remark that some of the clauses of the section are penal, and

* Special Appeal, No. 2482 of 1870, from a decree of the Officiating Judge of Mymensingh, dated the 30th August 1870, affirming a decree of the Deputy Collector of that district, dated the 31st May 1870.

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Beng. Act VIII of 1869. The present suit is brought under s. 37 of Beng. Act VIII of 1869, the right to measure being given by s. 25 of that Act; these two sections correspond with s. 9 of Beng. Act VI of 1862. By s. 9 of Beng. Act VI of 1862, and by ss. 25 and 37 of Beng. Act VIII of 1869, "every proprietor" of an estate or tenure has a right to measure and survey his estate, and may, under certain circumstances, apply to the Court to have that right established, whereas by s. 10 of the former Act, and by s. 38 of the latter Act, the only person entitled to apply for measurement is "the proprietor." There is a significant distinction between the wording of ss. 9 and 10 of Beng. Act VI of 1862, and ss. 25, 37, and 38 of Beng. Act VIII of 1869. The case of *Shumbhoo Chunder Sadhookhan v. Kala Chand Karr* (1) has expressly decided that the owner of a fractional share of an estate has full power to measure. [BIRCH, J.—That was decided with reference to a *gantidar*.] *A fortiori* a *patnidar*, who is the owner of a superior tenure, would have such a right. [BIRCH, J.—S. 68 of Beng. Act VIII of 1869 expressly bars the right of a sharer in a joint estate to distrain for rent.] I submit that is in my favor, inasmuch as wherever the rights of a shareholder are limited by Beng. Act VIII of 1869, they are so limited by express provision.

Baboo *Jadub Chunder Seal* for the respondents.—The mean-

deprive the ryot of his tenure. It is, therefore, the more important that no proceedings should be taken under this section except in instances where the interference of the Collector is absolutely necessary, and in such exceptional circumstances as are laid down in the section. The applicant must first prove what steps he has taken to obtain the knowledge of the tenures in his estate, and that he is unable to measure because he cannot ascertain them. The applicant in this case makes general assertions, but does not state what steps he took to ascertain the tenures, and how he failed.

I think also that the applicant under this section must be "the proprietor

of the estate," not a shareholder only in the proprietary body. It is not right that such shareholders should have separate measurements. Such proceedings would be productive of great annoyance and harassment to the tenants in the estate. The law does not say that any shareholder of an estate may apply to the Collector; and looking to the remarkable provisions of this section, it seems to me that it should not be extended beyond its plain terms.

I would set aside the Judge's order and dismiss the plaintiff's application with all costs.

(1) 1 W. R., 53, 54.

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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(1) *Ante*, p. 401.

(2) *Ante*, p. 398.

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

SHOORENDRO MOHUN ROY AND OTHERS (PLAINTIFFS) v. BHUGGUBUT' 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, Shoshechhoo-son 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.