

1868  
July 3.

Before Mr. Justice Loch and Mr. Justice Glover.

JUMARATMANDAL v. NILKANT SIRCAR

AND

MANOHARA DASÍ v. NILKANT SIRCAR.\*

Act X of 1859, s. 77—*Intervention.*

A. & B., putnidars, each held a moiety of an estate. C., a ryot, paying rent to both, sold his tenure to D., who also obtained a farming lease of B.'s share in the pu'ni. A sued C. for the whole rent of the estate. *Held*, that D. was entitled, as B.'s lessee, to be made a party to the suit under section 77 of Act X of 1859.

NILKANT and Dwarkanath Sircar, as putnidars of Sagorpain, sued Jumarat, a ryot, for arrears of rent. Jumarat replied that he had sold his tenure to Watson and Co., and that plaintiffs were only putnidars of half the mehal Sagorpain, Manohara Dasi being putnidar of the other half. Watson and Co. sought to be made a party to the suit, alleging that they had purchased the ryot's tenure, and had also obtained a farming lease of Manohara Dasi's share of the putni, and were in receipt of half the rents accordingly. Manohara also sought to be made a party, on the ground that she was half sharer in the putni, but she admitted the farming lease to Messrs. Watson and Co. The Deputy Collector of Berhampore decreed in favor of the plaintiff, on the ground that the ryot had not made known the transfer of his tenure to plaintiff. On appeal the Judge held, *1st*—That Manohara had no *locus standi* in Court, inasmuch as she had transferred her rights to Watson; *2nd*—That the Watsons came into Court not on their farm but on the ground of their purchase from the ryot, and therefore could not be made parties, on the authority of *Jogendra Chandra Ghose v. Lakhripriya Dasi* (1); *3rd*—That the ryot had not proved either the transferability of his tenure, or payment of rent to Manohara.

\* Special Appeals, No. 3277 and 3279 of 1867, from a decree of the Judge of Moorshedabad, affirming a decree of the Deputy Collector of that district.

(1) 8 W. R., 73.

On special appeal it was urged, that the Watsons were entitled to be made parties to the suit, in order to show that the plaintiff had not been in receipt of the whole rents of the tenure.

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 JUMARAT  
 MANDAL  
 " "  
 NILKANT  
 SIRCAR.

Messrs. *R. T. Allan* and *J. S. Rochfort* for appellants.

Baboo *Srinath Das* and *Ashutosh Chatterjee* for respondent.

The judgment of the Court was delivered by

LOCH, J.—In these cases, Nilkant Sircar sued Jumarat Mandal for rent. He replied that he had sold his jote to Watson and Co., and was not in possession. Watson and Co. contended, they were in possession, but that Nilkant was entitled to recover only a moiety of the rent, the other half being due to Manohara Dasi, the joint putnidar with plaintiff, from whom Watson and Co. had taken a farming lease of her half of the putni. Watson and Co. are, therefore, in the two-fold position of farmer of half of the putni and of tenant of Manohara Dasi's holding, the rent of which is demanded by the plaintiff.

Manohara Dasi intervened, but her intervention was disallowed, as she admitted that she had given her share of the putni in farm to Watson and Co.

Watson and Co. were not allowed by the Judge either to appear as intervenors, or to defend the suit as tenants, the Judge holding that they did not seek to appear in the farmer's capacity, and that they could not be added as parties interested in the suit, the provisions of Act X. not permitting such persons to be made parties to the suit.

We think the Judge has taken a wrong view of this case. The defendant, Jumarat, should be allowed to prove, if he can, that he is not in possession and not liable for the rent, and if Manohara be not allowed to appear as an intervenor, there can be no objection to Watson and Co. being allowed to appear in that capacity as deriving their title from her as set forth in their petition, and showing that the plaintiff has not received the whole of the rent which he claims.

The case is remanded for disposal with reference to the above remarks.