Before Mr. Justice Bayley and Mr. Justice Hobhouse.

PYARI MOHAN SING AND ANOTHER (PLAINTIFFS) *v.* MIRZA GAZI AND OTHERS (DEFENDANTS.)*

1869 March 20.

Pleading—Parties—Practice—Costs.

Each of two shareholders in a talook sued separately for his share of the rent due from a tenant who held under one kabuliat.

Held, that when both the shareholders were before the Court, though in different suits, the suits were maintainable, but that no more costs were to be awarded to the plaintiffs than if they had sued jointly.

Baboos *Ramesh Chandra Mitter* and *Rashbehari Ghose* for appellants.

Baboo *Chandra Madhab Ghose* for respondents.

The judgment of the Court was delivered by

HOBHOUSE, J.—These were suits for arrears of rent of the years 1274 and 1275 (Tipperah era), and they were brought at one and the same time before the same Revenue Court for the full amount of the arrears said to be due for the years I have mentioned; but in the one case the plaintiff sued for a 10-anna, and in the other the plaintiff sued for a 6-anna, share of the same rents. The defendants in each of the suits denied that any arrears of rent were due, and urged that the suits could not proceed separately, because the plaintiff in the two suits were proprietors of an undivided estate, and because the kabuliat on which the plaintiffs sued was given to the plaintiffs jointly, and not separately.

The first Court held that the defendants had agreed to pay the rents separately, and had not proved that they had paid those rents. The first Court gave the plaintiffs in each case a decree.

The lower Appellate Court took up the two cases together and held that, inasmuch as the two plaintiffs had collected the rents

* Special Appeals, Nos. 2701 and 2702 of 1868, from the decrees of the Judge of Tipperah, dated the 17th August 1868, reversing the decrees of the Deputy Collector of that District, dated the 27th May 1868.

1869

PYARI MOAN SING v. MIRZA GAZI.

ijmali up to the year 1274, they could not sue separately, but together, and because they did not so sue, the lower Appellate Court dismissed both the suits.

In appeal before us it is urged that when the defendants had agreed and acquiesced in the division of shares, the lower Appellate Court was wrong in dismissing the plaintiff's claim. If the special appeal had been entertained by us smiply on this ground, it is probable that we should have had to remand the case to the lower Appellate Court, because it appears to us that that Court has not given any judgment upon the issue distinctly raised between the parties as to whether or not there was an agreement or acquiesence on the part of the defendants to pay rents to the proprietors separately in the shares which the proprietors claimed, but we think that the lower Appellate Court's judgment was wrong on other grounds.

We think that in this case the circumstances are peculiar. Whether the kabuliat was a kabuliat which by its terms expressed separate shares or not, and whether the defendants did or did not agree to pay any separate shares, does not seem to us to be very material in this case, because this is not a case in which only one or more out of several shareholders are present in Court, and in which the other shareholders are not present ; but it is a case in which both the shareholders are present before the Court as plaintiffs representing the whole 16-annas of the claim, and that too in suits which from the very first were tried together. The defendants also are present in the two suits thus tried together, and they admit that the plaintiffs in these two suits do represent the whole of the claim. This is not, therefore, a case, such as is represented by the Judge, in which very great hardship may be inflicted on ryot litigants by a variety of suits, on a variety of claims, in a variety of Courts, but it is one in which all the parties are present before the same Court, and at the same time, and in which the suits are heard together as if one suit. In such a case we do not know of any law or procedure so absolute as to prevent the Judge from doing justice between the parties. He had, on the one side, certain plaintiffs claiming the whole 16-annas of rent, and on the other side certain defendants admitting these plaintiffs to be the 16-anna proprietors, and

admitting the rate of rents claimed, and only denying that they had not been paid. In this case we think that it would have been more right and more just if the lower Appellate Court had made one case out of the two, and had done justice between the parties upon the merits.

1869

PYARI MOHAN SING v. MIRZA GAZI.

We think, therefore, that the judgment of the Judge must be reversed, and the cases must go back to the Judge, and that he must try as if they were one case between the plaintiffs and the defendants, whether, on the evidence on the record, the defendants have paid the whole or any part of the rents in question.

The costs of all the Courts will abide the result of the ultimate decisison of the Judge; but in awarding those costs, the Judge will be careful not to give more costs than he would have given had these suits been instituted in the first instance as one suit.

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

KIIUB LAL (PLAINTIFF) *v.* GHINA HAZARI AND OTHERS (DEFENDANTS.)*

1869 March 20.

Right to Settlement—Separately Numbered Estates.

Certain lands accreted to an estate, No. 667, and were temporarily settled as a separate estate, No. 3148. During the currency of this settlement, the owner sold his right and interests in 667 to the plaintiff; and in 3148 to the defendants. On the expiry of the temporary settlement the plaintiff as owner of the parent estate, sued to establish his right to the permanent settlement of 3148.

Held, that the suit would not lie, and that the plaintiff had no claim to have a settlement of 3148.

ONE Ramlal was the owner of an estate, Mauza Madanpur, bearing a number, on the towji of the Collectorate, 667. To this some alluvial land accreted, of which a temporary settlement was made with Ramlal under a number, 3148, in the towji. In 1865, Ramlal sold all his rights in No. 667, describing it by that number and as the Nizamut mehal, making no allusion whatever to any churs as appertaining thereto. At the same time he sold all his right and interest in 3148 to the defendant. The temporary settlement of 3148 expired in 1867. On the expiry of the

* Special Appeal, No. 2280 of 1868, from a decree of the Subordinate Judge of Bhagulpore, dated the 30th June 1868, affirming a decree of the Moonsiff of Tegra, dated the 11th February 1868.