

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter

ROYPRIYANATH CHOWDHRY AND OTHERS (DEFENDANTS) v. 1869
BIPINBEHARI CHUCKERBUTTY AND OTHERS (PLAINTIFFS). * Feby. 15.

Act X. of 1859—Arrears of Rent—Jurisdiction of Revenue Court—Benami Lease.

Some of the defendants had taken a lease in the benami name of C. P. B., and were in actual possession of, and had paid rent for, the lands demised. The other defendants were sureties for C. P. B. A suit was brought in the Court of the Deputy Collector, against those who were actually in possession of the land, together with the sureties, for arrears of rent. It did not appear from the lease how far each defendant was interested in or entitled under it.

Held, per PEACOCK, C. J., whose opinion prevailed, (MITTER, J., *dissenting*), that the Deputy Collector had no jurisdiction to enquire into matters extraneous to the lease, and that plaintiffs' suit ought to have been dismissed.

Held, (per MITTER, J.) that the suit was properly brought against the actual tenants, and not against the benamidar, and that the Collector had jurisdiction.

Held, by both Judges, that the suit should be dismissed as against the sureties, who could not as such be sued under Act X. of 1859.

THIS suit was instituted in the Court of the Deputy Collector of Basirhat, on 25th September 1867, to recover arrears of rent from 1st Baisakh, to Chaitra 1273, laid at Rs. 8,327-12-5.

In the plaint it was alleged that about 18,650 bigas in Sundarban, Lots Nos. 94, 95, 96, 97, had been let to the gantidar defendants under potta and kabuliat on 21st February 1858, taken and given in the name of Chandra Prasad Bose, on the security of the zemindar defendants. The land, having been subsequently measured, was found to contain 19,317 bigas and 14 katas, and rent was fixed at Rs 12,823-9, viz., Rs. 4,500 for 6,000 bigas of cultivable land, and Rs. 8,323-9 for the remaining 13,317 bigas and, 14 katas of jungle; and a suit for arrears of rent for the years 1270 and 1271 was brought and decreed against the gantidar defendants, who paid off the amount decreed.

The defendants, Jagattara and Padma Kumari Chowdhraïn, stated that they only were in possession of land in Lot No. 95; that

* Regular Appeal No. 58 of 1868, from a decree of the Deputy Collector of Basirhat in Zillah 24-Pergunnas, dated the 31st December 1867.

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they had petitioned the plaintiffs to be allowed to pay separately ; that in that lot 2,511 bigas were allotted to them at a separately fixed annual rent of Rs. 1,824-6 ; that a decree of the High Court (appeal No. 398 of 1865) in a suit brought against them by plaintiffs, had made them liable for the rents of that land ; that some portion of that rent was due from them ; and they prayed the Court to receive from them what was justly due, and exonerate them from the plaintiffs' claim. The decision of the High Court, and written statements of the defendants in the former suit, were filed by these defendants.

For Priyanath Chowdhry, it was stated that he held lands jointly with Mathuranath Roy Chowdhry ; that formerly the rental was Rs. 12,823-13 ; that subsequently plaintiffs granted a new potta, which, as was admitted, was not registered reducing the fixed annual rent to Rs. 10,408-13-6, that a moiety of the said tenure belonged to him.

Mathuranath Chowdhry entered no defence.

The Deputy Collector gave a decree in favor of the plaintiffs against the defendants Jagattara and Padma Kumari for the sum of Rs. 1,824-6, with proportionate costs, and the remaining portion of the claim, with proportionate costs, against the other defendants.

The defendant, Roy Priyanath Chowdhry, appealed to the High Court.

Baboo *Ashutosh Chatterjee* and *Khettranath Bose* for appellants.

Babooos *Ashutosh Dhur* and *Bhawani Charan Dutt* for respondents.

MITTER, J.—This is a suit for arrears of rent instituted under the provisions of clause, 1, section 23, Act X. of 1859. The plaintiff is the proprietor of certain mehals in the Sundarbans, and he sued the defendants Padma Kumari Dasi, Jagattara Dasi, Priyanath Chowdhry, and Mathuranath Chowdhry, deceased, represented by his executor Prasanna Kumar Chowdhry, alleging that these parties had taken from his predecessor a gantidari lease of the mehals in question in the

name of one Chandī Prasad Bōse; and that they had defaulted to pay the rent due to him for the year 1273, B. S. The defendants, Padma Kumari and Jagattara, put in a joint written statement; urging that, by virtue of a private partition between them and their co-sharers, the defendants, Priyanath and Mathuranath, a defined portion of the mehals in question had been allotted to them; and that they were ready and willing to pay to the plaintiff the share of the rent due from them on account of that portion. The defendant, Prasanna Kumar, did not enter appearance in the Court below; nor has he preferred any appeal against the decision pronounced by that Court. The defendant Priyanath, by his written statement, urged, among other pleas, that Jagattara and Padma Kumari had no interest in the lease taken by him and his co-sharer Mathuranath in the name of Chandī Prasad, that the plaintiff had repeatedly recognized him, and the said Mathuranath, as his only tenant by recovering rents from them, and that he and Prasanna Kumar, as the representative of Mathuranath, were the only parties in possession of the premises covered by the lease. The Deputy Collector of Basirhat, who tried this suit in the first instance, has decreed a portion of the rent under claim against the defendant Padma Kumari and Jagattara; and the remainder against the defendants, Priyanath and Prasanna Kumar, jointly. Against this decision the defendant Priyanath alone has appealed to this Court, and his pleader, Baboo Ashutosh Chatterjee, urged amongst others the following points on his behalf:—

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1st.—That the Deputy Collector has erroneously decreed a portion of the rent under claim against the defendants Padma Kumari and Jagattara; there being no legal evidence to prove that those two ladies were in any way concerned in the properties covered by the lease.

2nd.—That the lease upon which the plaintiffs' action is based, being in the name of a person other than the defendants, the Deputy Collector had no jurisdiction to try this suit under the Full Bench Ruling, *Prasanna Kumar Pal Chowdhry v. Kailash Chandra Pal Chowdhry* (1). With reference to this last point, I

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wish to observe in this place that it was never raised in the Court below, nor mentioned by the appellant in the memorandum of appeal filed by him in this Court ; and it is only, because it purports to involve a question of jurisdiction that I have thought it proper to grant him permission to raise it now for the first time.

The first of these objections is untenable. By it the appellant does not mean to contend that a joint decree for the whole rent due ought to have been passed against him and the two ladies Padma Kumari Dasi and Jagattara Dasi; but his contention really is that no decree ought to have been passed against those two ladies, inasmuch as there was no legal evidence to prove that they were his co-sharers. I do not think that the appellant is fairly entitled to take this plea. Rightly or wrongly, the Deputy Collector has passed a decree against those two ladies; and as they are satisfied with it, the appellant ought not to be allowed to complain, when it is clear that the effect of that decree has been rather to reduce his own liability. The appellant says that he and Mathuranath are liable for the whole rent; but if a part of that rent has been, as he contends, improperly decreed against other parties, he and Mathuranath have been really benefited to that extent. If appellant is really willing to pay the whole rent, he is welcome to do so, and I have no doubt the plaintiff will gladly receive it from him ; but, at any rate, it is clear that the appellant has no right to complain of a proceeding by which he has been really benefited.

With reference to the second objection, I have given to it my most careful and earnest consideration; but I am bound to say that I feel myself unable to subscribe to its correctness. If I have correctly understood the Full Bench ruling referred to by the appellant, it goes merely to hold that the Revenue Courts, constituted as they are by the provisions of Act X. of 1859, are not competent to entertain suits for rent against persons other than the *actual tenants* themselves, even though such persons might be justly liable for it according to the rules of equity and good conscience. I do not wish for one moment to impugn the soundness of this ruling; but I think that it is wholly inapplicable to the circumstances of the present case. Here it is admitted on all sides that Chandi Prasad is

mere benamidar ; and so far as the appellant is concerned, his pleader, Baboo Ashutosh Chatterjee, even while he was engaged in arguing this point, repeatedly stated, in answer to questions put to him by me, that Chandi Prasad has no sort of interest whatever in the properties covered by the lease in question. Under such circumstances it is clear that Chandi Prasad is not the *actual tenant* within the meaning of the Full Bench Ruling referred to, and the question whether Chandi Prasad is legally liable for the rent or not, does not therefore arise. A benamidar in this country is a mere name; and as such, he has no sort of interest, legal or equitable, in the property which he ostensibly professes to hold. I entirely concur with Mr. Justice Phear in the remark made by him in the case of *Sidee Nazeer Ali Khan v. Ojoodhya Ram Kahn* (1), though for a different purpose, that in our Mofussil Courts there is no distinction between legal and equitable estates. "There is but one kind of proprietary right," says that learned Judge in page 408, "call it legal or equitable as you choose, which is recognized by the Court; it is an entity, not divisible into parts or aspects." According to this view of the law, an admitted benamidar, like Chandi Prasad, cannot be said to have any interest, legal or equitable, in the lease in question, and he is not, therefore, liable, either in law or equity, for the rent reserved by that lease. Suppose, for instance, that the plaintiff, with full knowledge of the fact that Chand Prasad was a mere benamidar, and after having repeatedly recognized the appellant and his co-sharer Mathuranath as his tenants, as the appellant himself contends, had instituted an action for rent against Chandi Prasad in the Collector's Court, and in execution of a decree obtained in such a suit instituted behind the back of the appellant, caused the tenure in question to be sold. Would not the appellant be entitled to impugn the whole of these proceedings upon the ground of fraud, or at least to get rid of them, upon the ground that they could not legally affect *his* property, inasmuch as they were taken in his absence? In my opinion he would be clearly entitled to do so ; and this circumstance clearly goes to show that the plaintiff in this case has no remedy against Chandi Prasad, either in law or equity. The plaintiff's case is

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not that the defendants in this suit are liable to him merely upon the ground of equity and good conscience, while another person is legally responsible to him for the rent; but what he substantially says is that the defendants are the real tenants; that they are the parties who took the lease, and are in actual possession of the tenure; that he has always received his rent from them, and he produces a document, which establishes beyond all doubt that, in a previous suit brought by him for the rents of 1270 and 1271 against these very defendants in the Collector's Court, a final and conclusive decree has been passed in his favor. I do not think that a case of this description properly falls within the purview of the Full Bench ruling referred to. It has been said that one of the questions to be tried in this suit was whether or not the defendant Padma Kumari and Jagattara were co-lessees with the appellant and Mathuranath; and that the solution of this question is beyond the jurisdiction of the Collector. I am unable to subscribe to the soundness of this argument. A question of this sort is, in my opinion, clearly within the jurisdiction of the Collector to try; for I see no distinction whatever between this question and the question which frequently arises in ordinary suits for rent, namely, whether the defendants are really related to the plaintiff as his tenant. Suppose, for instance, that a plaintiff institutes an action in the Collector's Court against certain persons who, he alleges, are the heirs and representatives of the original lessee, and a question arises as to whether all the defendants, or some of them, are such heirs and representatives. Can it be said that the Collector has no jurisdiction to try such a suit? If not, I do not see any reason why the Collector should not be competent to try a precisely similar question in the present action; the complication arising from the fact of the lease being in the name of Chandi Prasad, being entirely removed by the circumstance that Chandi Prasad, as a mere benamidar, is admitted on all sides to be a person having no title or interest in the lease.

In conclusion I wish to observe that the appellant is the last person who is entitled to raise the objection now under consideration. His case throughout has been that Chandi Prasad is nobody, and that he and Mathuranath are the only real tenants.

and have been repeatedly recognized as such by the plaintiff himself. It does not, therefore, lie in his mouth to say that, if the plaintiff chose to bring his action in the Collector's Court, he ought to have sued Chandi Prasad, the admitted benamidar, as the actual tenant, and this indeed is the substance of his present objection as I understand it.

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I would, therefore, dismiss this appeal, except as to the second objection, with reference to which further evidence ought to be gone into.

The plaintiffs' claim against the sureties ought to be dismissed ; such persons not being liable to be sued under Act X. of 1859.

PEACOCK, C. J.—I am of opinion that the plaintiffs must fail in their suit. The case falls within the Full Bench Ruling, *Prasanna Kumar Pal Chowdhry v. Kailash Chandra Pal Chowdhry* (1).

The plaint admits that the potta was granted to Chandi Prasad Bose; but the plaintiffs state that it was taken in his name by the defendants. It is clear that the land was demised to Chandi Prasad, and that he covenanted to pay the rent; and that the sureties, as sureties for him, guaranteed the payment. Chandi Prasad being the person to whom the land was leased, and who agreed to pay the rent, was by law the tenant. Those who took in his name, may be equitably liable to pay the rent. No proof was given to show that the defendants ever made known to the plaintiff that the lease was taken benami for them.

Priyanath says that he and Mathuranath, who is dead, took the lease. The defendants, Jagattara and Padma Kumari, say that Lot No. 95 is in their possession; and that they have been made liable by the High Court to pay rent for it; that they offered to pay rent for it; but that the plaintiffs refused to allow them to pay their shares separately, and have sued all the defendants jointly for the whole amount due.

The defendant Priyanath admitted his liability to pay the rent of the whole premises as reserved; but he denied liability to pay for the excess lands, as they were not measured in his pre-

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sence, and he says that a new potta was granted under which the rent was reduced. It is admitted, however, that such new potta was not registered.

One issue raised was "whether the defendants, Jagattara and Padma Kumari, are entitled to pay to plaintiff the rent of their share of the estate admitted by them?"

It is not very often that one finds a right to pay claimed. But so it is in this case. The defendants, Jagattara and Padma Kumari, claim the right to pay a share of the rent; and it has been decided that they have the right to pay that share.

The appellant in one ground of appeal says:—"The female defendants, Jagattara and Padma Kumari, are not the tenants of the plaintiff; but have colluded with the latter in order to defraud me. The decision of this Hon'ble Court proceeded solely on the admission of the defendant, and cannot consequently be held to have conferred upon them any right as against third parties."

I am of opinion that one man has not a right to pay rent due from another. To warrant a finding that defendants, Jagattara and Padma Kumari, are entitled to pay rent for their share, it must be proved that they had a share of the land in lease: They say they are entitled to a share; that they are liable for the rent of that share; that they have a right to pay the rent of that share separately; but that they are not liable for the whole rent, and are not interested in the whole lease. Priyanath says that they have no share or interest in the lease; that they are not liable to pay the rent or any part of it; and that they have no right to pay it.

The Deputy Collector has decreed that they should pay Rs. 1,824-6 of the rent. He says:—"On the third issue it is to be observed that hereinbefore plaintiff had brought a suit for arrears of rent of these lands for the years 1270 and 1271 against the defendant, as also against Jagattara and Padma Kumari; and the defendants, the said Jagattara and Padma Kumari, have got a decree on the 12th March 1866 from the High Court, entitling them to pay off to the plaintiff the arrears of rent of the lands admitted to be held by them. Plaintiff also expresses no objection to receive from the said defendants the rent of

“the lands in their share. Especially, it is clearly evident, from the numerous documents filed by the defendants, that the share admitted is not held by them unjustly; and that they are liable to pay the rent thereof separately to the plaintiff.”

He could not discover from the lease itself whether the defendants, Jagattara and Padma Kumaria, were liable to pay any part of the rent. His decision is founded upon matters extraneous to the lease. He could not decide what portion of the rent the defendants, Jagattara and Padma Kumari, and what portion Priynath had a right, or was liable, to pay without going into evidence extraneous to the lease, which he, as a Revenue Court, had no jurisdiction to do. In fact, to determine what are the respective rights and liabilities of the several defendants, it is necessary to show to what extent the defendants, if at all, are respectively liable.

It is said that defendant Priyanath is benefited by the decision; for if he is liable to the whole, he cannot be injured by having another, who is not liable, declared entitled and liable to pay part of the rent. I cannot say that no injury can arise from such a finding. But whether it can or cannot, I think it was a finding upon a matter into which the Deputy Collector had no jurisdiction to enquire; and that as there is a dispute as to the extent of the shares, and as to the parties beneficially interested in the lease granted to Chandi Prasad, the question cannot be determined in the Revenue Court. In that Court Chandi Prasad, or the persons admitted to be beneficially interested in the lease, can alone be made liable; and no right or liability extraneous to the lease can be enquired into and decided. That can be done only in the ordinary Civil Court.

As regards the surety defendants, the Deputy Collector had clearly no jurisdiction, yet he has made them jointly liable for part of the rent. The plaintiff let the premises to Chandi Prasad. He looked to him as his tenant, and his sureties for payment of the rent. If a person chooses to let to one man, he cannot, in the Revenue Courts, recover the rent from others, on the ground that the lease was taken for the benefit of those others and benami for them. Let him recover from the man to whom he demised the land, and let the tenant, and those who

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are beneficially interested, settle their disputes amongst themselves. When a dispute arises as to who is beneficially interested under a lease, and to what extent and in what shares, it can be settled only in the ordinary Civil Courts.

It appears to me, therefore, that the suit ought to be dismissed; and that this appeal ought to be allowed with costs of suit and of this Court.

There being a difference of opinion between the two Judges; the opinion of the Senior Judge will prevail, and the decree will be entered accordingly.

Before Mr. Justice Loch and Mr. Justice Mitter.

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JONES CATHARINE DURANT AND ANOTHER, (PETITIONERS)
 v. CHANDRA NATH CHATTERJEE, (OPPOSITE PARTY.)*

Lunatic—Act XXXV. of 1858, s. 2—“Residing”—Jurisdiction.

A lunatic had been for a number of years in involuntary confinement in Bhowanipore Lunatic Asylum, within the jurisdiction of the Court of the Judge of the 24-Pergunnas, and was possessed of property out of that jurisdiction. On an application to the Judge to appoint a manager of his property, *held*, that, as the lunatic was residing within the jurisdiction of the Court of the 24-Pergunnas, the Judge could, under Act XXXV. of 1858, section 2, inquire into the fact of his insanity, and order a manager to be appointed to the estate.

THIS was an application by the son and daughter of one Nicholas Kullonas, a lunatic in Bhowanipore Asylum, situated within the jurisdiction of the Judge of the 24-Pergunnas, to be continued as managers of the estate of the lunatic which was situated out of that jurisdiction, and that a previous order, appointing the Collector of Backergunge guardian, should be withdrawn.

Baboo *Anukul Chandra Mookerjee* and *Mr. Allan* for appellants.

Baboo *Jagadanand Mookerjee* for respondent.

* Miscellaneous Regular Appeal, No. 375 of 1868, against a decree of the Judge of 24-Pergunnas, dated the 30th June 1868.