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IN THE MATTER OF RANI RAISUNNISSA BEGUM.

proceed, as required by section 3 of the Act, and after such enquiries as may be necessary to determine which of the parties, *i. e.* claimants, was entitled to a certificate under that Act? It has been said that as the applicant is only entitled to a small portion, if entitled to any thing, she is not entitled to a certificate, and that as the respondent has the greater interest, the certificate ought to be given to her. It has also been said that, as the petitioner was childless at the death of her husband, she is not entitled, under the Shia law, to succeed. With regard to the first objection, it seems to us that if the petitioner is entitled to a share, the mere fact of her having a small share will not debar her fron getting a certificate entitling her to collect according to the share due to her; and with regard to the other point we have referred to Macnaghten and Baillie, and find nothing in support of the statement that a childless widow is not entitled to succeed to her husband's estate.

We, therefore, reverse the order of the lower Court, and remand the case to the Judge to be tried in the usual manner, and to determine whether the petitioner is or is not entitled to receive a certificate. The parties will pay their own costs.

Before Mr. Justice Loch and Mr. Justice Bayley.

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MRITYUNJAYA SIRKAR (PLAINTIFF) *v.* GOPAL CHANDRA SIRKAR AND OTHERS (DEFENDANTS)*

Registry of Transfer—Acknowledgment of Tenancy.

See also 13 B. L. R, 150.

The mere deposit of rent in the Collector's Office by the purchaser of an under tenure in his own name and that of the registered tenant, is not sufficient notice to the zemindar of such purchase; nor is the mere acceptance by the zemindar of rent so paid an acknowledgment on his part of the purchaser as his under-tenant, but it is otherwise when there is acceptance with notice notwithstanding that the transfer had not been registered.

A certain jote, registered in the zemindar's books in the name of Jahiruddin, was sold in satisfaction of a decree for arrears of rent obtained by the zemindar against the said Jahiruddin.

The plaintiff brought a suit to set aside the sale, alleging that the jote did not belong to Jahiruddin, but to him (plaintiff),

* Special Appeals, No. 888 of 1868, from a decree of the Officiating Additional Judge of Jessore, reversing a decree of the Sudder Ameen of that District.

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MRITYUNJAYA SIRKAR v. GOPAL CHANDRA SIRKAR.

under his purchase from Jahiruddin; and that he and Kali Kumar deposited the rents, which the zemindar had received, and consequently, he could not ignore their relationship as tenants; but, notwithstanding, the zemindar had sold the tenure under a collusive decree for rent against Jahiruddin.

The first Court gave a decree for the plaintiff which was reversed by the Judge, on appeal, on the ground that the transfer had not been registered, and that mere cognizance by the zemindar of the fact of transfer would not cure the defect of want of registration.

Plaintiff appealed specially.

Baboos *Banshidhar Sen* and *Girija Sankar Mozoomdar* for appellant.

Mr. *R. T. Allan* and Baboos *Bhawani Charan Dutt* and *Pyari Mohan Roy* for respondents.

The judgment of the High Court was delivered by

LOCH, J.—(After stating the facts).—We do not concur in the Judge's reasons for coming to the conclusion he has done, still we think his order must be affirmed.

In special appeal, the plaintiff alleges that the Judge is wrong in holding that the law required his purchase to be registered in the zemindar's office, for as he is a cultivating ryot, no registration is required, he not being the holder of a tenure intermediate between the zemindar and the cultivator. This contention is, however, at once contradicted by the fact admitted by plaintiff that he holds kabuliats from tenants under him for the lands in question.

He then goes on to urge that even if registration were necessary, the zemindar has condoned any omission on the part of the plaintiff by receiving rent from him; and he refers to several deposits of rent made by him into the Collector's office, on account of this tenure, from 1862 to 1865, which he avers the zemindar took away. On referring, however, to the mode in which these deposits are entered, we find that they have been made in the joint names of Jahiruddin, Mrityunjaya, and Kali Kumar, but there is nothing to show what was the particular interest

belonging to plaintiff in the tenure. Nor in the declaration made by the plaintiff's agent under section 5, Act VI., 1862, (B. C.) is any thing disclosed as to the plaintiff's *status* ; nor is it shown to us that any notice, in which the plaintiff claimed to be the purchaser of the tenure, was served on the defendant, so that even if defendants have, as alleged, taken all the money in deposit, it is impossible to say that he took it knowing that plaintiff had any interest in the tenure, or that he was thereby admitting plaintiff's title as a tenant. We think that when a party wishes to make known to the zemindar that he has a right to a tenure, the rent of which the zemindar refuses to take from him, he should distinctly state what is the interest he claims, and the notice to the zemindar should comprise this information. It is not sufficient for a man wishing to protect his special interest, of which the zemindar may have no knowledge, to put money into the Collector's office in the name of the recorded tenants along with his own, without stating what his claim is, for, unless he do so, the zemindar is not obliged to enquire as to his *status*. The payments, as made by plaintiff, might have been voluntary payments, or payments, such as that of a mortgagee to save his own interest, which a zemindar is not bound to recognise. We think, therefore, plaintiff has failed to prove the acceptance of rent as condoning his omission to register the tenure. We think the Judge is quite wrong in holding that the acceptance of rent by the zemindar would not be a sufficient acknowledgment of the plaintiff as a tenant, and would not cure the defect of non-registration. We think if the zemindar took rent from plaintiff, as holder of the tenure, he could not afterwards draw back and ignore his position in any suit for rent he might bring.

Lastly, it is urged that no balance was due when the suit for rent was brought. This is not correct. There was a balance, and the decree given shows that there was a balance. The special appellant, though, tried to shift his ground, saying that there was no arrear due when the tenure was sold, beyond a trifle for costs of suit and expenses of execution. There was a balance existing for which the tenure was liable to be sold, and it is impossible to say that this balance consisted of costs only. I think the special appeal should be rejected with costs.