

MACPHERSON, J.—I still incline to the opinion which I expressed in referring this case to a Full Bench, that no separate suit will lie. But in other respects I concur with the Chief Justice.

GLOVER, J.—I also retain my former opinion, and I was prepared to suggest a course by which Mussamut Jumayi would have been able to recover her undoubted rights, without bringing a fresh suit at all. The decision of the majority, however, effects the purpose I had in referring this case, though in a different way, and I am perfectly satisfied with the result.

Before Sir Barnes Peacock, Kt., Chief Justice. Mr. Justice Bayley, Mr. Justice L. S. Jackson, Mr. Justice Macpherson, and Mr. Justice Glover.

KALINATH ROY (INTERVENOR) v. ISWAR CHANDRA GHOSAL
(PLAINTIFF)*

Intervention—Adding Parties—Act X. of 1859, s 77.—Act VIII. of 1859, s. 73.

In a suit for arrears of rent at enhanced rate, defendant pleaded that he had sold the holding to a third party, who thereupon asked to be added as a defendant. *Held*, that such intervenor could not be made a party to the suit.

THE plaintiff, respondent, Iswar Chandra Ghosal, sued the defendant, Guruprasad Mazumdar, in the Court of the Deputy Collector of Moorshedabad, under clause 4, section 23 of Act X. of 1859, for arrears of rent at an enhanced rate, after notice. The defendant set up that he had sold the holding to Kalinath Roy on 3rd Sraban 1270 (1863); that Kalinath should, therefore, be made a party to the suit; and that the suit was illegally brought against him, the defendant. Kalinath Roy sought to be made a party, stating that he had been in possession since he purchased the holding from the defendant, on 3rd Sraban 1273 (1866), and that the holding was istemrari, or permanent. The Deputy Collector would not allow Kalinath to be added as a party, and gave a decree against the defendant, Guruprasad Mazumdar.

Kalinath Roy appealed to the Judge, who held that, according to the decision in *Jogendur Chunder Ghose v. Lukhee Preca* (1),

* Special Appeal, No. 443 of 1868, from a decree of the Officiating Judge of Moorshedabad, affirming a decree of the Deputy Collector of that district.

(1) S W. R., 78.

1868

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he had no *locus standi*, and dismissed his appeal. Kalinath Roy then appealed to the High Court, on the grounds that the decision quoted by the Judge is not applicable to this case, and that as the plaintiff did not object to this suit being tried between him and the intervenor, the lower Appellate Court was wrong in not trying the case.

The appeal was heard on 14th August 1868, before LOCH and GLOVER, JJ., who, in consequence of the conflicting decisions, *Jogendur Chunder Ghose v. Lukhee Preea Dossee* (1), *Gridaree Sing v. M. Collis* (2), *Annada Persad Kowar Chowdhary v. Kitabuddeen* (3), *Issur Chunder Bhattacharjee v. Bhyrub Chunder Shaha* (4), *Jumarat Mandal v. Nil Kant Sircar* (5), referred the following question for the opinion of a Full Bench :

“ Whether, under the provisions of Act X. of 1859, a Court trying a suit under that Act can, except under the provisions of section 77, make a third party claiming to be the real tenant, a defendant in the suit along with parties sued by the plaintiff; and can direct the case to proceed against the party so made a defendant ?”

Baboo *Anand Chandra Ghosal* for appellants.

Baboo *Abhay Charan Bose* for respondents.

The opinion of the Full Bench was delivered by

PEACOCK, C J.—We are of opinion that in this case the intervenor had no right to insist upon being made a defendant, and that the Court would have been wrong if it had made him a defendant. The case did not fall within section 77 of Act X. of 1859, and even if section 73, Act VIII. of 1859, extended to proceedings under Act X., the intervenor had no interest which entitled him to become a defendant, or would have justified the Court in making him one.

In point of fact, the intervenor never was made a defendant in this case. The decree for enhanced rent was passed against the original defendant, and, therefore, the question really does not arise in this case.

The decree of the lower Appellate Court will be affirmed with costs.

(1) 8 W. R., 78.

(2) 8 W. R., 497.

(3) 4 Wym., 461.

(4) 3 W. R., Act X. Rul., 166.

(5) 1 B. L. R. (A. C.), 74.