

Before Mr. Justice Mitter and Mr. Justice Maclean.

1878
Aug. 2. NOBODEEP CHUNDER SHAHA (PLAINTIFF) v. SONARAM DASS
AND OTHERS (DEFENDANTS).*

Service of Notice of Enhancement—Beng. Act VIII of 1869, s. 14.

Where a tenure is owned by a joint Hindu family, it is sufficient service of notice of enhancement under s. 14, Beng. Act VIII of 1869, if any one of the co-sharers is served with the notice.

THE only material point in this case was as to the sufficiency of the service of notice of enhancement. For this point the facts are sufficiently stated in the judgment.

Baboo Nilmadhub Bose and Baboo Tarinee Kanto Bhuttacharjee for the appellant.

Baboo Bhurrut Chunder Dutt for the respondents.

MITTER, J. (MACLEAN, J., concurring).—In this case the Munsif awarded a decree for 14 rupees 2 annas 3 gandas and 2 krants as arrears of rent for the year 1282 (1875), against the defendants Sonaram Dass, Ramanando Dass, and Ramneedhee Dass, the sons of Sheetaram Dass. It appears from the finding of the Courts below that these three brothers constitute a joint Hindu family, and the tenure, the rent of which is sought to be enhanced, belongs to this joint family.

One of the questions raised in this case was, that notice of enhancement was not served on Ramneedhee Dass. The facts with reference to this objection are these:—These three brothers, as already stated, are members of a joint Hindu family. Ramneedhee Dass resides at Kooch Behar, where he acts as mooktear. One notice of enhancement was issued by the zemindar, and was

* Appeal from Appellate Decree, No. 2585 of 1877, against the decree of H. Beveridge, Esq., Officiating Judge of Zilla Rungpore, dated the 4th of August 1877, modifying the decree of Baboo Jogendro Nath Ghose, Officiating Munsif of Burrobary, dated the 4th of April 1877.

served personally on Sonaram Dass and Ramanando Dass, who reside in their family residence. The Munsif was of opinion that, under these circumstances, the service of the notice was sufficient in law.

The District Judge has come to a different conclusion on this point with reference to Ramneedhee Dass. He thinks that there having been neither personal service upon Ramneedhee Dass, nor substituted service as provided by s. 14 of Beng. Act VIII of 1869, the suit cannot be decreed as against him. He has, accordingly, modified the decree of the Munsif as against Ramneedhee Dass: in fact he has dismissed the suit as against him, leaving the decree as against Sonaram Dass and Ramanando Dass intact.

We think that the decision of the District Judge is not correct. It is quite clear that in this case the zemindar was not bound to issue three separate notices to the three brothers Sonaram Dass, Ramanando Dass, and Ramneedhee Dass. They constitute a joint Hindu family, and the tenure in question is held by that family. The zemindar was, therefore, not bound to issue separate notices to them. That being so, under the admitted facts of this case, it was impossible to serve that notice personally on all these three persons, because Sonaram Dass and Ramanando Dass reside in the family dwelling-house, and Ramneedhee Dass in a distant country at Kooch Behar. We think that where a joint family owns a tenure, it is sufficient service within the meaning of s. 14 if any one of the co-sharers is served with the notice.

In this view of the case, we think that there was sufficient service of the notice under s. 14 upon the joint owners of the tenure. We are, therefore, of opinion that the District Judge was not right in dismissing the suit as against Ramneedhee Dass.

We, therefore, reverse the decree of the lower Appellate Court, and restore that of the Munsif with costs.

Appeal allowed.

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