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IN THE GOODS OF HURRY DOSS BONERJEE AND SREEMUTTY GUNGAMONY DABEE.

You have no right to enter a caveat, simply because you received a special citation.]

Mr. *Branson* in reply.

PONTIFEX, J.—I think Mr. Bonerjee's caveat must be discharged, and he will have no costs of appearance. I do not think administration can be granted to the father, there being no debts, at all events no debts of which the amount is unliquidated. The widow can apply when she comes of age and until then the Official Trustee can pay the income to her next friend for her maintenance.

If there are any debts application must be made to the Court.

Taxed costs of suit may be paid by the Official Trustee out of the fund in his hands. If he is not satisfied to do it on this order, he must come to Court under the Trustee Act.

Order accordingly.

Attorney for the petitioner: Mr. *Gillanders.*

Attorney for the Caveator: Mr. *C. D. Linton.*

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

ANNODA CHURN ROY (SPECIAL RESPONDENT) *v.* KALLY COOMAR ROY AND OTHERS (APPELLANTS).*

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June 5.

Landlord and Tenant—Suit for rent of Ijmali Property—Co-Sharers—Form of Suit—Parties.

If ijmali property is let to a tenant at an entire rent, the rent is due in its entirety to all the co-sharers, and all are bound to sue for it; no one co-sharer can sue to recover the amount of his share separately, whether the other co-sharers are made parties or not. But if the land demised ceases to be ijmali, and different portions of it become the property of different owners, any one of the owners may sue for so much of the rent as he considers himself entitled to, making the other owners parties to the suit.

Where co-sharers of ijmali land let to a tenant at an entire rent brought a suit against their tenant to recover their proportionate shares of the rent, and made the other co-sharers defendants, avowedly for the purpose of obtaining an adjudication of their title as between themselves and the defendants other than the tenant:

* Appeal under s. 15 of the Letters Patent against the decree of Mr. Justice Ainslie, dated the 28th of November 1877, made in Special Appeal No. 1318 of 1877.

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Held, that as the area of the property had not been divided, as the rent had always been paid in its entirety, and as the title of all the co-sharers remained ijmali the suit would not lie.

Baboo *Huri Mohun Chucherbutty* for the appellant.

Baboo *Kashi Kant Sen* for the respondents.

THE facts of this case sufficiently appear from the judgment of

GARTH, C. J.—This suit is brought to recover from the defendant No. 1, who is a ryot, an eight-anna share of the rent of a certain jote, which, as plaintiffs say, formed the joint property of their father, Guru Dass Roy, the defendant No. 3, and Prankisto Roy, the father of defendant No. 2.

The plaintiffs' case is, that an undivided eight-anna share of this property has been conveyed to them by a deed of gift; and they sue the defendant to enforce payment by him of their half share of the entire rent.

They have made defendants Nos. 2 and 3 parties to the suit, avowedly in order to obtain as against them an adjudication of their title to the eight-anna share of the rent; and they are in point of fact endeavouring to try the question of title as between them and the defendants Nos. 2 and 3 under the guise of a rent suit against the defendant No. 1.

It is not suggested that defendant No. 1 was unwilling to pay his rent in its entirety to the persons who were entitled to receive it; but he is harassed with this suit in order that the alleged title of the plaintiffs to their share as against the defendants Nos. 2 and 3 may be ascertained and established.

The learned Judge of this Court considers that such a suit will lie, but we are unable to agree with him. If ijmali property is let to a tenant at one entire rent, we think it clear, upon principle and authority, that the rent is due in its entirety to all the co-sharers, and that all are bound to sue for it; and that no co-sharer can sue to recover the amount of his share separately, whether the other co-sharers are made parties to the suit or not.

Of course if the land demised ceases to be ijmali, and one portion of the divided area becomes the property of *A* whilst another becomes the property of *B*, it is necessary that an ap-

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portionment of the rent should take place, and then in order to obtain such an apportionment, it would be quite proper that either *A* or *B* should bring a suit against the tenant for so much of the rent as he considers his proper portion, making *B* or *A*, as the case may be, defendant to the suit.

An illustration of this will be found in the case of *Sreenath Chunder Chowdhry* v. *Mohesh Chunder Bandopadhya* (1).

But here there has been no division of the area of the property. The area is entire, the rent has always been paid by the tenant in its entirety, and the title of the co-sharers remains ijmali.

We think, therefore, that the decision of the Munsif is right; and that the judgment on special appeal must be reversed, and the plaintiffs' suit dismissed, with costs in both the Courts.

Before Mr. Justice L. S. Jackson and Mr. Justice R. C. Mitter.

NILMONEY SINGH DEO (DEFENDANT) *v.* BANESHUR (PLAINTIFF).*

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May 2.

Illegitimate Sons—Right to Maintenance under Hindu Law.

An adult illegitimate son has not, by Hindu law as prevalent in Bengal, any right to maintenance.

THIS was a case in which the plaintiff, who was admittedly an illegitimate son of Rajah Nilmoney Singh Deo, sued the Rajah for maintenance at eight annas a day, asserting that by custom and by Hindu law illegitimate sons were entitled to maintenance.

The Rajah did not dispute the paternity, and admitted that if the plaintiff had been his son by a *dasi* (a handmaid brought into the family with a bride) he would, by the custom of the family, have been entitled to *some* maintenance; but denied that the plaintiff had any such right, as he was a son by a common woman of a different and inferior caste. Both the lower Courts came to the conclusion that the plaintiff was not the son of a *dasi*; but

(1) 1 C. L. R., 453.

* Special Appeals, Nos. 1115, 1116, and 1117 of 1877, against a decree of H. L. Oliphant, Esq., Officiating Judicial Commissioner of Zilla Chota Nagpore, dated the 6th March 1877, affirming the decree of Lieutenant-Colonel B. W. Morton, Deputy Commissioner of Manbhoom, dated the 31st of July 1876.