

arrange themselves under one or other of these heads, coercion or fraud." It is enough in this case to say that there is not a particle of evidence of either coercion or fraud, or indeed of any influence of any sort or kind exercised on the Diwan by the plaintiff.

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 SAYAD
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Their Lordships will for these reasons humbly recommend to Her Majesty that the decree of the Chief Court ought to be reversed, that the appeal to the Chief Court ought to be dismissed with costs, that the decree of the District Judge ought to be varied by declaring that the plaintiff was duly appointed to the office of gaddinashin of the shrine of Baba Farid Shakarganj by the late Diwan, Pir Alla Jowaya, and was entitled to possession of the property attached thereto from the date of the death of the said Pir Alla Jowaya, and that the said decree ought to be affirmed in other respects.

The first and second respondents will pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellant : Messrs. *Hughes & Sons.*

Solicitors for the respondent : Messrs. *T. L. Wilson & Co.*

C. B.

APPELLATE CIVIL.

Before Mr. Justice O'Kinealy and Mr. Justice Trevelyan.

PROFULLAH CHUNDER BOSE AND OTHERS, MINORS, BY THEIR MOTHER
 SURBOMONGALA DASI AND GRAND-MOTHER TRIPURA SUNDARI DASI
 (PLAINTIFFS) v. SAMIRUDDIN MONDUL (DEFENDANT).*

1894
 December 19.

Bengal Tenancy Act (VIII of 1885), sections 15, 16—Operation of those sections in a suit for rent of land, to which the plaintiff succeeded before the Bengal Tenancy Act came into force.

Sections 15 and 16 of the Bengal Tenancy Act are not retrospective.

THIS was a suit for arrears of rent for the years 1297 (1890) of what the plaintiffs (who were minors) alleged was a perma-

* Appeal from Appellate Decree No. 252 of 1894, against the decree of T. D. Beighton, Esq., District Judge of 24-Parganas, dated the 5th of December 1893, reversing the decree of Babu Nogendra Nath Roy, Munsif of Burasat, dated the 11th of March 1893.

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 PROFULLAH
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 MONDOL.

nent tenure. The grounds of defence were that the relationship of landlord and tenant did not exist between the plaintiffs and defendant; and that the suit was not maintainable, as no notice of the plaintiffs' succession had been given to the Collector, and no road cess papers filed in the Collectorate in accordance with the provisions of sections 15 and 16 of the Bengal Tenancy Act; and these grounds raised the only two issues in the case.

The Munsif found that the defendant was the plaintiffs' tenant, and as to the second issue said :—

“Defendant, after the examination of witnesses, has taken objection that plaintiffs should have given notice of their succession to the Collector, under section 15 of the Tenancy Act. But it appears that the mother of the minors holds a certificate of guardianship. The objection taken by defendant cannot now be entertained.”

The Munsif gave the plaintiffs a decree.

The District Judge on appeal said :—

“I am of opinion that this suit for rent must fail. The plaintiffs are minors, and they succeeded to a permanent tenure, in respect of which this suit has been brought, in 1291 (1884), when their father died. Under sections 15 and 16 of the Tenancy Act, no person entitled to a permanent tenure by succession can recover rent in respect of the tenure until notice of succession has been given to the Collector and the fee paid. It appears to make no difference whatever that succession opened out before the passing of the Tenancy Act. Nor will it assist the plaintiffs that they are represented by their mother who is their certificated guardian.”

The Judge therefore reversed the decision of the Munsif, and dismissed the suit.

From this decision the plaintiffs appealed to the High Court, on the grounds that the Judge was in error in applying to the case the provisions of sections 15 and 16 of the Bengal Tenancy Act, and that the plaintiffs, having succeeded to the tenure before that Act came into operation, were not bound to have recourse to the provisions of sections 15 and 16 of the Act to entitle them to sue for rent.

Babu *Saroda Churn Mitter*, and Babu *Hara Oomaz Mitter*, for the appellant.

Babu *Moheen Chand Mitter*, for the respondent.

The judgment of the Court (O'KINEALY and TREVELYAN, JJ.) was as follows :—

This is an appeal from the decision of the District Judge of the 24-Parganas, dated the 5th of December 1893, reversing a decision of the second Munsif of that District, dated the 11th of March 1893.

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 PROFULLAH
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The plaintiff in this case sued for rent, and at the hearing it appeared that the succession had opened out to him long before the Tenancy Act came into operation. The question is whether sections 15 and 16 of the Tenancy Act apply to this case, so as to affect him. Section 16 certainly takes away a substantial right; and if we interpreted sections 13 and 14 in the same manner as the Judge in the Court below has interpreted sections 15 and 16, we should arrive at a most unreasonable conclusion. We think the sections have not retrospective effect.

The order of the lower Court is set aside, and the case remanded to the District Judge in order that he may try it on the merits.

The respondent will be entitled to the costs of this appeal.

J. V. W.

Appeal allowed.

Before Mr. Justice Norris and Mr. Justice Banerjee.

BABU LAL (ONE OF THE DEFENDANTS) v. NANKU RAM AND ANOTHER
 (PLAINTIFFS.) *

1894
 February 27.

*Hindu law—Inheritance—Sapindas—Bandhus—Mitakshara law—Descendants
 in third degree from common ancestor—Second cousins.*

The plaintiffs were descended in the third degree from *M* who was *R*'s maternal great-grandfather, and *R* was descended in the third degree from *M* who was the plaintiffs' maternal great-grandfather. *Held*, with reference to the definition of *bandhu* and *sapinda* in the Mitakshara (by which school of Hindu law the parties were governed) that the plaintiffs were *R*'s *sapindas* through his mother, and *R* was the plaintiffs' *sapinda* directly; and being thus mutually related as *sapindas*, the plaintiffs were heritable *sapindas* and *bandhus* of *R*, *ex parte materna*, and on his death without issue were entitled to his property as his heirs.

* Appeal from Appellate Decree No. 1942 of 1892 against the decree of G. G. Dey, Esq., Officiating District Judge of Shahabad, dated the 17th of August 1892, affirming the decree of Babu Abinash Chunder Mitter, Subordinate Judge of that District, dated the 3rd of December 1891.