

1893-94 a co-sharer, to make use of the debt for a purchase on his own account. It should be presumed, in the absence of evidence to the contrary, that he did what he might lawfully do, and their Lordships think the Judicial Commissioner has taken the right view of the transaction. They will, therefore, humbly advise Her Majesty to affirm the decree of the Judicial Commissioner and of the lower Appellate Court, except so far as it is modified by the decree of the Judicial Commissioner and to dismiss this appeal. The appellant will pay the costs of it.

MAKUND
RAM SUKAL
v.
SALIQ RAM
SUKAL.

Appeal dismissed.

Solicitors for the appellant : Messrs. T. L. Wilson & Co.

Solicitors for the respondent : Messrs. Burrow & Rogers.

C. B.

APPELLATE CIVIL.

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Feb. 28.

Before Mr. Justice O'Kinealy and Mr. Justice Ameer Ali.

GOLAP CHAND NOWLAKHA AND OTHERS (DEFENDANTS) v. ASHUTOSH CHATTERJEE (PLAINTIFF).^{*}

Bengal Tenancy Act (VIII of 1885), section 158—Tenure, Incidents of—Tenants, Applications against several—Form of Petition—Practice.

Section 158 of the Bengal Tenancy Act does not authorize one application being made against a number of tenure-holders having separate and distinct tenures. The proper procedure is by separate applications against each.

The petitioner having, on the 25th June 1890, become the purchaser of *mehal* Huda Burnagar at a revenue sale under Act XI of 1859, and having taken delivery of possession through the Collectorate, applied in the Court of the Subordinate Judge of Murshedabad under section 158 of the Bengal Tenancy Act :

- (a) to determine the names, places of abode and other particulars of the parties holding possession of *mouza* Girdgury appertaining to the purchased *mehal*, and also to determine what are the rights of such parties ;

^{*} Appeal from Order No 114 of 1893 against the order of R. H. Anderson, Esq., Officiating District Judge of Murshedabad, dated the 10th of March 1893, reversing the order of Bahoo Kali Churn Ghosal, Subordinate Judge of that district, dated the 18th of December 1892.

- (b) to determine whether the second parties are liable to be ejected, and whether they have any right to retain the land they had been holding ; and also to determine to what class of tenants they belong, and whether the rents payable by them are liable to enhancement ;
- (c) to determine what amounts and rates of rent are payable by the parties who have been holding possession of the *mouza*.

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The petition contained the names of some twenty tenants as being the parties in possession of this *mouza*, and it was against these tenants as a body that the application was made.

Several of these tenants filed counter-petitions, in which they separately objected to the application on various grounds, all of them however taking the objection that the petitioner was not entitled under section 158 to make one joint application for the purpose of determining the incidents of the several tenancies held by his tenants as a body ; but that the application contemplated by the section was in the nature of a suit against each tenant separately.

The Subordinate Judge held that section 158 contemplated cases of individual tenants ; and that the provision of the Civil Procedure Code as to suits applied to applications under that section. He, therefore, rejected the application on the ground of misjoinder.

On appeal the District Judge was of opinion that the section gave to a zemindar the right of making one application which might embrace more than one tenancy, and was intended to provide a cheap method of settling disputes between landlords and tenants, one which could be easily worked and by which all matters in dispute between them could be dealt with together. He further was of opinion that the application was in the nature of a suit on the authority of *Petu Ghorai v. Ram Khelawan Lal* (1), but considered that Chapter IV of the Code of Civil Procedure did not stand in the way of the petitioner as no question of joinder of causes of action arose, it not being compulsory on him to state his

(1) I. L. R., 18 Calc., 667.

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reasons for making the application. He therefore held, *first*, that the form of the application was not affected by the Civil Procedure Code; and, *second*, that there was nothing in section 158 to prevent the petitioner from making one application for the purpose of determining the incidents of the several tenancies referred to in the petition. He therefore allowed the appeal.

The tenants appealed to the High Court.

Mr. *Woodroffe* (with him *Babu Saroda Churn Mitter*) for the appellants contended that an application under section 158 against a number of tenure-holders holding separate and distinct tenures could not be maintained - citing *Bhupendro Narayan Dutt v. Nemye Chand Mondul* (1); *Debeudro Kumar Bundopadhyia v. Bhupendro Narain Dutt* (2), and distinguishing *Moheeb Ali v. Ameer Rai* (3.)

Dr. *Rash Behari Ghose* (with him *Babu Haraprosad Chatterjee*) for the respondent.

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

In this case Ashutosh Chatterjee applied to the Court under section 158 of the Rent Act to have the nature of a large number of tenancies determined in one suit. In other words, he asked the Civil Court to do what the law declares in section 103 to be the peculiar duty of the revenue authorities.

The Subordinate Judge was of opinion that section 158 only referred to particular cases, and did not justify such an application. The District Judge, however, was of opinion that the section should be literally construed, and that the proceeding should be allowed. We think the Legislature did not contemplate that the several causes of action should be lumped up together. There is no procedure known to our law that recognizes the right to bring batches of suits in one claim. We direct that the decree of the lower Court be set aside, and that of the first Court affirmed with costs.

T. A. P.

Appeal allowed.

(1) I. L. R. 15 Calc., 627.

(2) I. L. R., 19 Calc., 182.

(3) I. L. R., 17 Calc., 538.