

## FULL BENCH.

*Before Sir Comer Peitheram, Knight, Chief Justice, Mr. Justice Prinsep, Mr. Justice Pigoz, Mr. Justice O'Kinealy and Mr. Justice Ghose.*

1890.  
*February 7th.*

ASIRUN BIBI, MINOR, BY HER NEXT FRIEND (PLAINTIFF) v. SHARIP  
MONDUL AND OTHERS (DEFENDANTS).\*

*Minor—Representative of Minor in suits—Married woman—Next friend  
—Civil Procedure Code Act XIV of 1882, s. 445.*

A married woman may act as the next friend of an infant plaintiff.

*Guru Pershad Singh v. Gossain Munraj Puri*, over-ruled (1).

THIS case was referred to a Full Bench by Mr. Justice Trevelyan and Mr. Justice Banerjee. The order of reference was as follows:—

“In this case the Moonsiff of Serajgunge gave the plaintiff a decree. On appeal the Subordinate Judge of Pubna and Bogra set aside that decree on the ground that the next friend of the plaintiff was a married woman. The Subordinate Judge relied upon the decision of a Division Bench of this Court (Prinsep and Grant, JJ.) in the case of *Guru Pershad Singh v. Gossain Munraj Puri* (1). We do not agree with that decision. In our opinion s. 457 of the Civil Procedure Code has no application to the case of a next friend. Section 445, we think, governs the case. We refer to a Full Bench the following question: ‘Can a married woman act as next friend of an infant plaintiff?’ Should this question be decided in the affirmative, it is admitted that the plaintiff is entitled to the decree which was given to her by the Moonsiff.”

Baboo *Kishore Lall Sirkar*, for the appellant, contended that under s. 445 a married woman might be a next friend. (The Court then called upon the other side.)

Baboo *Jasoda Nundun Pramanick*, for the respondent, relied on the decision of Prinsep and Grant, JJ., and contended that

\* Full Bench on Appeal from Appellate Decree No. 1317 of 1888, against the decree of the Subordinate Judge of Pubna and Bogra, dated 27th March 1888, modifying a decree of the Moonsiff of Serajgunge, dated the 25th November 1887.

the practice of the English Courts was in his favour (Judicial Act of 1875, Order 16, Rule 8). Under the rules of the Original Side of the High Court a married woman was held unqualified to act as next friend (Rule 574, Belchambers, p. 232).

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Baboo *Kishore Lall Sirkar* was not called on in reply.

The opinion of the Full Bench was expressed by PRINSEP, J., and with that view the remainder of the Court concurred.

PRINSEP, J.—Upon reconsideration of this matter, I think that the view taken by the Division Bench which referred this case is correct. The plaintiff will therefore be entitled to a decree, the decree of the first Court being restored with costs.

T. A. P.

*Appeal allowed.*

*Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Prinsep, Mr. Justice Pigot, Mr. Justice O'Keefe and Mr. Justice Ghose.*

NARAIN MAHTON (DEFENDANT) v. MANOPI PATTUK (PLAINTIFF).  
*Bengal Tenancy Act (VIII of 1885) s. 153 (a)—Appeal from decree in rent suit under Rs. 100.*

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The words "amount of rent annually payable by a tenant" in s. 153 (a) of the Bengal Tenancy Act include the case of rent payable by a tenant to one of his co-sharer landlords who collects his share of the rent separately.

IN this case the plaintiff in the year 1293 F.E. sued the defendants to recover Rs. 24-11, as the bhoul rent of eight bighas of land, alleging that he had an eight-anna share in such rent. The defendants contended that the plaintiff had only an eight-pie share of the landlord's interest in the land. The *Moonsiff* held the defendant's contention to be correct, but on appeal to the Subordinate Judge the latter officer held that the plaintiff was entitled to an eight-anna interest in the rent and decreed the appeal.

One of the defendants appealed to the High Court. The amount claimed in the suit being less than Rs. 100, it was contended that under s. 153 (a) of the Bengal Tenancy Act no appeal

\* Full Bench on Appeal from Appellate Decree No. 1685 of 1888, against the decision of Baboo Krishna Chunder Dass, officiating Subordinate Judge of Gya, dated the 28th July 1888, reversing the decision of Moulvi Ata Hossein Khan, *Moonsiff* of Aurungabad, dated the 31st March 1887.

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was allowed unless it could be held that the decision of the Courts below decided a question of the amount of rent annually payable by the tenant. Mr. Justice Pigot and Mr. Justice Rampini before whom the case came having regard to the conflicting decisions of *Prasanna Kumar Banerjee v. Sri Nath Dass* (1) and *Aubhoy Churn Maji v. Shoshi Bhusan Bose* (2) referred to the Full Bench the following question:—Do the words “amount of rent annually payable by a tenant,” in s. 153 of the Bengal Tenancy Act, mean “the total amount of rent annually payable by a tenant to the whole body of his landlords where there are more than one,” or do they mean “the amount of rent payable by a tenant to one of his co-sharer landlords, who collects his share of the rent separately?”

Moulvi *Mahomed Yusuf* for the appellant contended that there was an appeal; relying upon *Aubhoy Churn Maji v. Shoshi Bhusan Bose* (2), and pointed out that the Subordinate Judge had not tried the proper issue between the parties, but the question whether the plaintiff was in possession and enjoyment of half the *hakimi* share.

No one appeared for the respondent.

The opinion of the Full Bench (PETHERAM, C.J., PRINSEP, PIGOT, O’KINEALY and GHOSE, JJ.), was delivered by

PIGOT, J.—In this case we agree with the decision come to by Mr. Justice Mitter and Mr. Justice Macpherson, and referred to in the order of reference; and in answer to the question put to this Bench, we think that the words “amount of rent annually payable by a tenant” occurring in s. 153 of the Bengal Tenancy Act include the case of rent payable by a tenant to one of the co-sharer landlords who collects his rent separately.

T. A. P.

*Appeal dismissed.*

(1) I. L. R., 15 Cal., 231.

(2) I. L. R., 16 Cal., 155.