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governed by his ordinary discretion, and has given reasons which would be equally applicable to any case whether tried in the High Court or in the Small Cause Court.

Having regard to the objects of the Act, I think that a certificate can only be given in a case where a Judge considers that the case was not one which ought to be brought in the Small Cause Court. So strictly has this section been construed, that I have never known a certificate given under it. It is not necessary to determine in what class of cases a certificate should be given; but I doubt very much whether the Legislature by the terms of section 22 intended much to extend the powers which they gave to the Judge under section 9 of Act XXIV of 1864, *vis.*, that he could only certify when "by the reason of the difficulty, novelty or general importance of the case or of some erroneous course of decisions in like cases in the Court of Small Causes, the action was fit to be brought in the High Court."

I would hold that the plaintiffs were entitled to no costs in the Court below, and that each party should pay his own costs of this appeal.

Appeal allowed.

Attorney for the appellant: Babu Kedar Nath Mitter.

Attorney for the respondent: Mr. F. M. Leslie.

H. W.

APPELLATE CIVIL.

Before Sir Francis William Maclean, Knight, Chief Justice, and Mr. Justice Danerjee.

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Feb. 17.

SUKURULLAH KAZI AND OTHERS (PRINCIPAL DEFENDANTS) v.
BAMA SUNDARI DAS (PLAINTIFF).²

Land Registration Act (Bengal Act VII of 1876), sections 33 and 78—Suit for rent—Whether it is necessary to enable him to sue for rent that a putnidar should be registered under the Act.

A putnidar is not a proprietor within the meaning of sections 33 and 78 of the Land Registration Act.

² Appeal from Appellate Decree No. 252 of 1895, against the decree of Babu Nuffer Chandra Bhutta, Subordinate Judge of Hooghly, dated the 30th of November 1894, reversing the decree of Babu Haro Kumar Rai Munsif of Serampur, dated 26th of January 1894.

THIS appeal arose out of an action for rent. The plaintiff's allegation was that she was the proprietress of a share of a zemindari, and she also held other shares as *putnidar* and *dur-putnidar*. She further alleged that she got her name registered in respect of those shares under the Land Registration Act. The principal defendants denied the relationship of landlord and tenant, and also pleaded that, inasmuch as the name of the plaintiff was not registered under the Act, the suit was not maintainable. The Court of first instance dismissed the suit, holding that the plaintiff failed to prove the relationship of landlord and tenant; and also holding that, as the plaintiff did not get her name registered in respect of the share of one Mongola Dasi, whose *putni* right she had purchased, the suit was not maintainable. On appeal the learned Subordinate Judge decreed the suit, holding that it was not necessary under the Land Registration Act to register the name of the *putnidar* in order to enable her to bring and maintain a suit for rent; but he did not decide the point whether there existed the relationship of landlord and tenant between the parties.

From this decision the defendants appealed to the High Court.

Dr. *Asutosh Mookerjee* and *Babu Gyanendra Nath Basu* for the appellants.

Babu Saroda Churn Mitter and *Babu Haro Kumar Mitter* for the respondent.

The judgment of the High Court (MACLEAN, C.J., and BANERJEE, J.) (so far as it is material for the purposes of this report) was as follows :—

MACLEAN, C.J. :—The first point taken in this appeal was, that inasmuch as the plaintiff was not registered, the suit was not maintainable, having regard to sections 78 and 38 of Bengal Act VII of 1876. The question is, whether the plaintiff is a proprietor within the meaning of the term as used in those sections. I think that the purview of the Act is shown by the preamble which runs as follows :—

“Whereas it is expedient to make better provision for the preparation and maintenance of registers of revenue-paying and revenue-free lands, and of proprietors and managers thereof.” Looking at the sections to which I have referred and to the preamble

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1897 of the Act, I think the term "proprietor" was intended to be confined to a zemindar and not to a *putnidar*; the first objection therefore fails.

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Another preliminary objection was taken that an appeal would not lie having regard to section 153 of the Bengal Tenancy Act. Having regard to sub-section (b) of that section, it seems to me that the decree in this case has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, and therefore in my opinion an appeal lies.

This further question consequently arises. The Munsif found as a matter of fact that the relation of landlord and tenant did not subsist between the plaintiff and the defendant from whom she is claiming rent. The Subordinate Judge did not go into that matter at all. His judgment is absolutely silent upon the point. I am therefore of opinion that, as regards this point, which is the foundation of the plaintiff's claim, the case must be remanded to the Subordinate Judge for him to go into that question, and as the whole case is remanded, it will not prevent him from going into any other points which may have been raised, or from deciding, if he thinks fit, that a decree for the entire rent might be made, instead of a decree for a share only.

Upon these grounds the appeal will be allowed and the case remanded to the lower Appellate Court for retrial. The costs of this appeal will abide and follow the result.

Appeal allowed. Case remanded.

S. C. G.

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

1897 LALA RAMJEWAN LAL (DEFENDANT) v. DAL KOER (PLAINTIFF)
February 18. IN APPEAL NO. 87.*

Hindu Law—Will—Construction of Will—“Malik,” Meaning of, as applied to female legatees—Contingent bequest—Gift absolute—Life estate—Indian Succession Act (X of 1865), sections 111 and 125—Direction against alienation—Costs.

A Hindu, survivor of two brothers in a joint family under the Mitakshara law, died, leaving a widow and two daughters, a brother's widow, and

* Appeals from Original Decrees Nos. 87, 91 and 92 of 1895 against the decree of Babu Upendra Chunder Mallick, Subordinate Judge of Patná, dated the 28th of December 1894.