

*Sudhama Upadhyaya v. Queen-Empress* (1) proceed upon the principle that when a Magistrate initiates or directs the proceedings against an accused person and takes an active part in the arrest of or collection of evidence against such person, he is disqualified by reason of the provisions of section 555 of the Criminal Procedure Code from trying the case himself, and that a disqualifying interest as contemplated by that section may result from a purely official connection with the initiation of criminal proceedings. In the present case that principle is not applicable. Here, the complaint was in the ordinary course made before the Sub-Divisional Officer; he held an enquiry as authorized by section 202 of the Code, and eventually, upon the evidence recorded in the presence of the accused, found him guilty. There is nothing to indicate that he initiated or directed the proceedings or took any personal interest in the matter of the complaint instituted before him, and we do not think that he was disqualified in any way from trying the case.

It was perhaps irregular on the part of Mr. Gupta, the Joint Magistrate, in calling for and examining a witness after the evidence on both sides had been taken and the case adjourned for judgment; but it does not appear to us that the accused was in any way prejudiced by the action of the Magistrate, and indeed it may well be said that he (the Magistrate) was strictly within his rights under section 540 of the Code, for the case was still a pending case, when the fresh evidence was taken.

Upon these grounds we decline to interfere in this matter.

C. E. G.

## APPELLATE CIVIL.

*Before Mr. Justice Banerjee and Mr. Justice Rampini.*

GOPINATH CHAKRAVARTI AND OTHERS (PLAINTIFFS) v. UMAKANTA DAS ROY AND OTHERS (DEFENDANTS).<sup>a</sup>

*Bengal Tenancy Act (VIII of 1885), sections 56, clause (4), 187, clause (3) and 188—Joint landlords—Authorised Agent—Receipt given by Agent—Presumption under section 56, clause (4) of Act VIII of 1885.*

<sup>a</sup> Appeal from Appellate Decree No. 1451 of 1895, against the decree of E. Geaki, Esq., District Judge of Mymensingh, dated the 9th of May 1895, affirming the decree of Babu Krishna Chandru Chatterjee, Subordinate Judge of that District, dated the 27th of August 1891.

(1) I. L. R., 23 Calc., 328.

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IN THE  
MATTER OF  
ANANDA  
CHUNDER  
SINGH  
v.  
BASU MUDH.

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CHAKRA-  
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UMAKANTA  
DAS ROY.

In a case where there are several joint landlords it is necessary for the Court, before giving effect to the presumption under section 56, clause (4) of the Bengal Tenancy Act, to find affirmatively that the agent was authorised by them all either verbally or in writing.

THE plaintiffs sued the defendants for the *dur-ijara* rents of the years 1297, 1298 and 1299. The plaintiffs alleged that certain lands were held in *dur-ijara* under them by the first defendant, and the father of the other two defendants who were minors. The defendants pleaded payment, and produced a receipt dated 14th Falgun and signed by the plaintiff Gopinath Chakravarti. Gopinath alleged that this receipt was granted for payments made on account of collections of 1295 and 1296, during which years the defendants or their predecessors in interest acted as collection agents for the plaintiffs. The Court of first instance found that the receipt was one for rent paid by the *dur-ijaradars*, and that the receipt, "being informal and not containing the particulars required to be specified by section 56, Bengal Tenancy Act, is presumably an acquittance in full for all demands of the plaintiffs up to the 14th Falgun 1299."

The plaintiffs appealed to the Officiating Judge of Mymensingh who dismissed the appeal, and whose judgment contained the following passage: "It is urged before me that the rent receipt is invalid, as it was not signed by all the landlords, and as Gopinath was not an agent to sign receipts for the other landlords. Such an authority need not be in writing, and there is nothing to show that he was not verbally authorised; at any rate, his conduct might well have led defendants to believe him to be so authorised."

Babu *Grish Chunder Chowdhry* for the appellants.

Mr. *Abdul Majid* for the respondents.

The judgment of the Court (BANERJEE and RAMPINI, JJ.) was as follows:—

The only question raised in this appeal, which arises out of a suit for arrears of rent, is whether the lower Appellate Court was right in giving effect to the statutory presumption under section 56, clause 4, of the Bengal Tenancy Act, in favour of the defendants, respondents. The learned Vakil for the appellants contends that the lower Appellate Court was wrong in giving

effect to that presumption for two reasons : first, because the receipt (Ex. A), which is made the basis of the presumption, was not signed by all the landlords, and the party by whom it was signed was not authorised in writing to sign it on behalf of all the landlords ; and, secondly, because, even if verbal authority was sufficient, the lower Appellate Court has not affirmatively found that Gopinath was verbally authorised to sign the receipt for all the landlords.

We are of opinion that the first ground upon which the learned Yakil for the appellant bases his contention is not tenable. The case comes under section 188, which does not require an agent to be authorised in writing to act on behalf of all the landlords. All that that section requires is that the agent should be authorized, and such authority may be given, in our opinion, verbally or in writing. It is true that sub-section (3) of section 187 enacts that "every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorising an agent, may be signed or certified by an agent of the landlord authorised in writing in that behalf ;" but the case in our opinion comes more properly under section 188, as this is a case of several joint landlords and the receipt is signed by one of them.

The second ground urged on behalf of the appellants is, however, in our opinion, entitled to succeed. The receipt (Ex. A), before it can form the basis of any presumption under clause (4), section 56, must be shown to be a receipt granted by or on behalf of all the landlords ; in other words, in a case like this, where there are several joint landlords, it must be shown that the person by whom the receipt was signed was authorised by them all, either verbally or in writing. Upon this question of authority, all that the learned Judge says is this : "Such an authority need not be in writing, and there is nothing to show that he was not verbally authorised ; at any rate, his conduct might well have led defendants to believe him to be so authorised." We do not think that that is sufficient. It is not enough to say that it is not shown that Gopinath was not verbally authorised, or that the defendants had reason to believe that he was so authorised. It was necessary for the Court below, before giving effect to the presumption under section 56, affirmatively to find that Gopinath was verbally authorised ; and as it has not

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come to any such finding, we must hold that it was wrong in giving effect to the presumption in question. The learned Counsel for the respondents contended that, though there might not have been sufficient ground for raising the statutory presumption, there was here a presumption of fact raised by the lower Appellate Court upon the finding arrived at by it, that the amount that was due from the defendants had been paid off. No doubt, if there had been any such finding, or if the lower Appellate Court had said that upon the whole of the evidence adduced in the case it drew the inference as an inference of fact, that all that was due from the defendants had been paid off, that would have been a perfectly correct decision. But though the learned Judge below does refer to the evidence upon certain points, the presumption upon which he relies is not any presumption of fact, but clearly the presumption of law under section 56.

The case must, therefore, go back to the lower Appellate Court, in order that it may determine the two following points: The first is, whether Gopinath was verbally authorised to sign the receipt (Ex. A) for all the landlords. If this question is answered in the affirmative, the decree will be in favour of the defendants, as it has been made by the lower Appellate Court. If, on the other hand, this question is answered in the negative, then the lower Appellate Court will have to determine the second of the two points for which we remand the case, *viz.*, whether upon the evidence on the record, and bearing in mind that the burden of proof upon this question of payment is on the defendants, any presumption of fact arises in favour of their defence that all that was due from them had been paid off. With these directions we send the case back to the lower Appellate Court for final disposal. The costs will abide the result.

*Appeal allowed and case remanded.*

F. K. D.

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