

v. *Rajani Kanta Chatterjee* (1). For these reasons we dismiss this appeal with costs.

S. C. B.

Appeal dismissed.

Before Mr. Justice Rampini and Mr. Justice Sale.

RUP CHAND MAHTON

v.

GURDAN SINGH AND OTHERS.*

1901
Nov. 21.

Bengal Tenancy Act (VIII of 1885) s. 61, and Sch. III, art. 2(a)—Deposit of rent—Notice of deposit on one of several joint landlords, effect of—Limitation.

Service of notice on one of the landlords of the deposit of rent under s. 61 of the Bengal Tenancy Act (VIII of 1885) has not the effect of reducing the period of limitation to six months as provided in art. 2(a) of Sch. III of the Act, if there are co-sharer landlords jointly and severally entitled to the rent.

THE defendant Rup Chand Mahton appealed to the High Court.

The suits were brought by the plaintiffs Gurdan Singh and others, for arrears of rent. The defendants raised various pleas denying their liability to pay rent, but the one material for the purpose of this report was that the claim for rent for the year 1303 B.S. was barred, because some of the defendants deposited their rent in Court under the provisions of s. 61 of the Bengal Tenancy Act, and asked the Court to serve notices of this deposit on the plaintiffs; and it was contended that there was a presumption that they were served, and that therefore the period of limitation for the recovery of the rent for that year was six months from the date of such service as laid down in Sch. III, art. 2 (a) of the Bengal Tenancy Act. It was found that the notice was served upon only one out of the 28 plaintiffs. The Munsif decided this plea as well as the other pleas against the defendant and decreed the suit, and on appeal the decree of the Munsif was affirmed by the Subordinate Judge.

* Appeal from Appellate Decree No. 214 of 1898 against the decree of Brij Mohun Pershad, Subordinate Judge of Tirhut, dated the 25th of September 1897, affirming the decree of Babu Joya Prosad Pandey, Munsif of Samastipur, dated the 30th of June 1897.

(1) (1897) I. L. R. 25 Calc. 141.

1901

RUP CHAND
MAHTON
v.
GURDAN
SINGH AND
OTHERS.

Babu Umakali Mukerji for the appellant.

Mr. Gregory and *Babu Havendro Narayan Mitter* for the respondents.

RAMPINI AND SALE JJ. These are forty-five appeals against the decision of the Subordinate Judge of Muzaffarpur, dated the 25th of September 1897.

The suits were brought by the plaintiffs for arrears of rent. The defendants raised various pleas, and denied their liability to pay rent. These pleas were overruled by both the lower Courts. In this Court four of the pleas have been pressed before us, namely, *first*, that the suits are not maintainable; *secondly*, that the rent of 1303 is barred; *thirdly*, that the rent of the four-anna kist of 1304 is premature; and *fourthly*, that the finding as to the rate of rent is not supported by any evidence.

We think there is no force in any of these contentions.

The first plea is that the suits are not maintainable, because it appears that there was an *ekrarnamah* between the co-sharer landlords, and that subsequently two of the co-sharer landlords obtained a decree against the other co-sharers for an additional share, and this decree was affirmed by this Court. But the decree in favour of the co-sharer landlords does not refer to the *ekrarnamah*, and does not in any way set it aside. Now the plaintiff in this case sues for a 9 annas share of the rent; and because certain of the co-sharers have got a decree against the defendants for 15 gundas of the rent, that does not show that the plaintiff is not entitled to have 9 annas. Furthermore, he has given good evidence that he is entitled to such a share of the rent, and moreover there is evidence that the plaintiff is in the habit of collecting this share separately from his other co-sharers. There is no reason therefore to suppose that the suit is not maintainable.

The second plea, namely, that the rent of 1303 is barred, is founded on this contention that certain of the defendants deposited their rent in Court ostensibly under s. 61 of the Bengal Tenancy Act, and asked the Court to serve notice of this deposit

on the plaintiffs. Then it is said that as the Court had to serve the notices, it must be presumed that they were served, and that therefore the period of limitation must be six months from the date of such service, as laid down in Sch. III, art. 2 (a) of the Bengal Tenancy Act. But, in the first place, it appears from the evidence of the peon who served this notice that he served it on only one of the 28 plaintiffs, namely, Kally Charan Singh; so that the suit can be barred only as regards Kally Charan Singh. The plea of six months' limitation cannot apply to the other plaintiffs. But the co-sharer landlords are jointly and severally entitled to the rent claimed, so that the service of notice of the deposit on Kally Charan would not necessarily reduce the period of limitation applicable in this case to six months.

Then the plea that the rent of the four-anna kist of 1304 is premature also appears to be untenable. The point has been dealt with both by the Subordinate Judge and by the Court of first instance. The Court of first instance explains "that the agricultural year commences in Behar from the 1st of Asarh, and that the four-anna kist rent becomes due after the expiry of three months, that is, in Assin." The Munsif then goes on to say: "These suits were instituted long after the due date." Therefore the suit for this portion of the rent is not premature.

The last plea is that the Judge's finding regarding the rate of rent is not supported by any evidence. But that does not appear to be correct. The Subordinate Judge has spoken of the village papers. He thinks they afford evidence in support of these papers. The *putwari* comes forward to prove these papers and says that they are correct; and further that he knows the rents irrespectively of these papers, and he adds that he has always collected rents according to the rates specified in these papers. There is therefore not only the evidence of the village papers, but that of the *putwari*, and this appears to us very good evidence. The last plea accordingly fails in our opinion. Under these circumstances we must dismiss these appeals, which we accordingly do with costs.

Appeal dismissed.

1901

RUP CHAND
MARTON
v.
GURDAN
SINGH AND
OTHERS.