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who does not claim, any interest in the subject-matter of a suit can be made a party to it. By the old practice any number of persons who were necessary parties were considered as being parties having an interest in the matter of the suit, except in matters of contract. Under the Contract Act the distinction between joint and several contracts in respect of pleading has been abolished, and one party of any number, unless there be an express contract to the contrary, may be sued alone. In this case if the plaintiff can make out a partnership between the defendant and the person he wishes to have made a party, he will be able to recover against the person he has sued. If the person he has sued is only an agent, then the plaintiff having elected to sue the agent has no right to be allowed to join another person as principal; that would be a different suit. I must therefore refuse this application. I cannot see any reason why the original defendant should have appeared in this application, therefore he will get no costs. The other party who has opposed it must have his costs.

Application refused.

Attorneys for the plaintiff: Messrs. *Pittar* and *Wheeler*.

Attorneys for the defendant: Messrs. *Trotman* and *Watkins*.

Attorney for Ramchunder Chatterjee: Mr. *Farr*.

APPELLATE CIVIL.

Before Mr. Justice Prinsep.

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 July 5.

DOORGA PROSAD MYTEE AND OTHERS (DEFENDANTS) v. JOYNARAIN HAZRAH (PLAINTIFF).*

Co-sharers—Ijaradar—Enhancement of Rent—Beng. Act VIII of 1869, s. 18.

An izaradar is entitled to enhance the rent of ryots holding under him where there is no condition or stipulation in his lease precluding him from so doing.

* Special Appeal, No. 2601 of 1876, from a decision of Baboo Jadunath Roy, Subordinate Judge of Midnapore, reversing a decision of Baboo Annoda Prosad Chatterjee, Munsif of Chouki Danton.

One of several joint proprietors may, without making his joint proprietors parties, bring a suit for enhancement of rent against ryots holding under him, from whom he has been in the habit of realizing separate rents.

The Full Bench Ruling in *Doorga Churn Surma v. Jampa Dossee* (1) distinguished.

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THE plaintiff, a farmer for a term of years, and one of several co-sharers entitled to the rent of certain property, brought a suit for the enhancement of his share of the rent. The plaintiff alleged that the proportionate part of the rent due to him had hitherto been paid exclusively to him by the defendants irrespective of the shares due to the other co-sharers, who were not made parties to the suit. The Lower Appellate Court gave the plaintiff a decree. The defendant preferred a special appeal to the High Court.

Baboo *Umakali Mookerjee* for the appellants.—An ijaradar of a fractional portion of an undivided estate cannot sue for enhanced rents, although in receipt of a definite portion of the rent, unless he makes his co-sharers parties to the suit—*Doorga Churn Surma v. Jampa Dossee* (1). An ijaradar cannot sue for a kabuliat for his fractional share; and, therefore, cannot sue for enhancement—*Surrut Soondery Dabea v. Watson* (2). If such separate suits were possible, it would result in the splitting up of the tenure without the consent of the tenant; but see judgment of Mitter, J., in *Indar Chandra Dugar v. Brindabun Bihara* (3). The co-sharers, at any rate, should have been made defendants—*Dookhee Ram Sircar v. Gowhar Mundul* (4) and *Raj Chunder Mojomdar v. Rajaram Gope* (5). The ijara patta did not authorise the plaintiff to bring an action for enhanced rent.

Baboo *Doorgaram Bose* for the respondent.—A co-sharer in receipt of his separate share of rent can sue for enhancement without making co-sharers parties to the suit—*Rakkhal Chunder*

(1) 12 B. L. R., 289; S.C., 21 W. R., 46. (3) 8 B. L. R., 251; S.C., 15 W. R., F.B., 21.

(2) 11 W. R., 25.

(4) 10 W. R., 307.

(5) 22 W. R., 385.

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Roy Chowdhry v. Mahtab Khan (1) and *Gunga Narain Das v. Saroda Mohun Roy* (2). The ijara patta contains no express stipulation precluding enhancement, the ijaradar may, therefore, sue for enhancement—*Rushton v. Girdharee Tewaree* (3).

PRINSEP, J.—The plaintiff, as ijaradar of a third share, sues for rent at an enhanced rate. After the determination of the rate to which he is entitled, the rent has been decreed by the Lower Appellate Court. In special appeal two objections are taken to this decision: first, that inasmuch as the plaintiff was only an ijaradar, he had no right to enhance the rent; and secondly, that as he held only a share in the rent he could not enhance without making all his co-sharers parties to the suit. Another objection is taken that the defendants hold under a mokururee patta. But the finding of the Lower Appellate Court, that there is a total absence of satisfactory evidence with regard to the alleged mokururee tenure completely disposes of this point. The law as laid down by the lower Appellate Court, that, unless there is an express stipulation against the enhancement of rent by an ijaradar, he can exercise that power, is in accordance with the law as laid down in the case of *Rushton v. Girdharee Tewaree* (4); and the correctness of that ruling cannot be disputed. On the other point, whether being an ijaradar he has the right to enhance without making the co-sharers parties, it seems to me that, as he had admittedly received a specific sum for rent originally, no doubt calculated on a specific share, but for a long time received independently of the other co-sharers, it was in no way necessary that he should make those co-sharers parties to this suit. The decision of a Full Bench of this Court in *Doorga Churn Surma v. Jampa Dossee* (4), does not appear to be in point; the facts as they appear in the judgment of Mr. Justice Jackson not being the facts that I have already stated. In that case it would seem that there was no separate collection of rents from the ryots on the plaintiff's share; but that the rents were col-

(1) 25 W. R., 221.

(3) Marsh., 331.

(2) 3 B. L. R., A. C., 230; S.C.,
12 W. R., 30.(4) 12 B. L. R., 289; S.C., 21 W.
R., 46.

lected jointly on behalf of all the landlords. The law seems to have been clearly laid down in the case of *Gunga Narain Doss v. Saroda Mohun Roy* (1), that if the plaintiff, landlord, either proves that the tenants have paid their rents to him separately, or proves an express agreement on their part to pay his rent separately, the suit will lie by that landlord having only a share, in the absence of his other shareholders. And if he can bring a suit for arrears of rent on his specific share, there seems to be no reason why he should not be able to enhance that particular rent. The decision in *Dhookee Ram Sircar v. Gowhur Mundul* (2), as I read it, goes only so far as to state that, in order to arrive at a proper conclusion as to the amount of rent due to one having only a share in the property, the calculation must be based on an enhancement of the entire share; that the rent of the entire share should be enhanced as regards the payment of the full rent by the ryot, does not appear to be necessary. In my opinion, therefore, there is no reason why the plaintiff who has himself, and whose lessor has also, realized rent separately from the ryot on his one-third share, should not be able to sue for rent at an enhanced rate, even although he may not have joined his co-sharers as parties to the suit. I find also that this opinion is in accordance with that expressed by Mr. Justice Glover in the case of *Rakhal Chunder Roy Chowdhry v. Mahtab Khan* (3). The special appeal will, therefore, be dismissed with costs.

Appeal dismissed.

(1) 3 B. L. R., A. C., 230; S.C.,
12 W. R., 30.

(2) 10 W. R., 307.
(3) 25 W. R., 221.

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