by the Act. [GARTH, C.J.—It must be taken for granted that a notice to quit must be given: a reasonable notice at the end of the year—*Mahomed Rasid Khan Chowdhry* v. *Jadoo Mirdha* (1).] Notice is not a question of right, it may be given for the sake of convenience. When a landlord brings a suit, the only ground on which the tenant can defeat the landlord is by showing, by an underlease or by right of occupancy, a right of possession in the land. The tenant can only claim a sufficient time, and such time can be fixed by the Court.

Moulvie *Murhamut Hossein*, for the respondent, was not called upon.

The opinion of the Full Bench was delivered by

GARTH, C.J.—We are of opinion that, in the case of a ryot of the class specified in the question referred to us,—*i.e.*, a ryot whose tenancy can only be determined by a reasonable notice to quit expiring at the end of the year,—the ryot can claim to have a suit for ejectment brought against him by his landlord dismissed on the ground that he has had no such notice.

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice R. C. Mitter.

NATHUNI MAHTON (DEFENDANT) *v.* MANRAJ MAHTON (PLAINTIFF).*

1876 *Sept.* 14

Hindu Law—Mitakshara—Joint Family—Suit by one Member for a specific Share.

To a suit by one member of a Hindu joint family, living under the Mitakshara law, for a specific share of the joint family property, all the members of the family are necessary parties.

THIS was a suit for recovery of possession of a two-anna eight pie share in certain immoveable property.

* Regular Appeal, No. 26 of 1875, against a decree of Baboo Ram Prosaud, the Second Subordinate Judge of Zilla Patna, dated the 8th of October, 1874.

(1) 20 W. R., 401.

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The plaint stated that the property in question was acquired by the plaintiff's grandfather, who died leaving four sons, to whom the property descended in equal shares; that the plaintiff's father, the defendant Talawar, had two sons, and, on a private partition between them, Talawar took one-third of the four-anna share inherited by him, and his two sons each took a one-third share thereof; that in execution of a decree obtained by one Bhurrut Das, the right, title, and interest of Talawar was put up for sale, and purchased by the plaintiff out of his self-acquired funds; that, subsequently, the defendant Nathuni, in execution of a decree, which he alleged he had obtained against Talawar, advertised the property in dispute for sale as the property of Talawar, and, notwithstanding a claim thereto preferred by the plaintiff, the property was sold and purchased by the defendant Nathuni, who dispossessed the plaintiff. The plaintiff, accordingly, brought this suit, making Nathuni and Talawar defendants, for possession with mesne profits of his original one-third share and the one-third subsequently purchased by him. He alleged that the decree was obtained and the property brought to sale by the defendant Nathuni acting in collusion with Talawar, who had no power to alienate or encumber the property without legal necessity, which did not exist.

The plea of the defendant Nathuni, upon which the case was decided in the High Court, was contained in the 3rd paragraph of his written statement, and was to the following effect:—That the partition alleged by the plaintiff had never taken place, the family being still joint; and that the suit for a portion of the joint family property was not sustainable, all the members of the family not having been made parties.

The lower Court, whilst holding that the family was still joint, upon the authority of *Mahabeer Persad* v. *Ramyad Singh* (1), overruled the objection of the defendant as to the right of the plaintiff to maintain the suit, and awarded him a decree for a one-anna four pie share. The first defendant appealed to the High Court. The plaintiff objected by way of cross-appeal to the lower Court's finding as to the family being still joint.

(1) 12 B. L. R., 90.

Baboo *Kally Mohun Dass* for the appellant.

Baboo *Chunder Madhub Ghose* (Mr. *Sandel* with him) for the respondent.

The judgment of the Court was delivered by

GARTH, C.J. (who, after stating shortly the facts of the case and the finding of the lower Court, continued):—We think that, having regard to the evidence, the lower Court has rightly held that the family of the plaintiff is still joint, and that there has been no partition of the family property as alleged in the plaint.

That being so, it only remains for us to decide the question of law raised by the defendant, *viz.*, that the present suit is not maintainable, and should be dismissed upon that ground.

We think that this contention is well founded, and we find that the question has been settled by several authorities—*Rajaram Tewari* v. *Lachman Pershad* (1), *Sheo Churn Narain Sing* v. *Chukraree Pershad Narain Sing* (2), and *Cheyt Narain Sing* v. *Bunwaree Sing* (3).

The decision referred to by the lower Court does not support the view which the Subordinate Judge takes; in fact, it rather supports the contrary view, because it decides that one out of several members of a joint Hindu family is entitled to recover the whole of the joint property in a suit in which all the members are parties. It does not decide, as has been erroneously supposed by the lower Court, that a single member of a joint Hindu family governed by the Mitakshara law can recover a fractional share of the family property, which would on partition fall to his lot. That decision further points out the mode in which the joint property should be partitioned and the divided shares disposed of, but with that question we are not concerned in this case.

For the reasons given above, we think the plaintiff's suit should be dismissed, upon the ground that he, still being a member of a joint Hindu family, consisting of himself, his

(1) 4 B. L. R., A. C., 118. (2) 15 W. R., 436.
(3) 23 W. R., 395.

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father, and his brother, cannot maintain this suit for the recovery of a two-third share of the joint family property.

Upon this ground, the decree of the lower Court must be reversed with costs.

Appeal allowed.

FULL BENCH.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Kemp, Mr. Justice Jackson, Mr. Justice Macpherson, and Mr. Justice Markby.

1876 *Aug.* 14.

DENOBUNDHOO CHOWDHRY (DEFENDANT) *v.* KRISTOMONEE DOSSEE (PLAINTIFF).*

Res-judicata—Act VIII of 1859, *s.* 2—*Former Suit to recover same Property on different grounds.*

Certain property, originally belonging to the husband of the plaintiff, was conveyed by him by deed of gift to his daughter, after her marriage with the defendant, as her stridhan. Some years after the daughter's death, the plaintiff brought a suit to recover the property, on the ground that the deed of gift was a forgery, and that she was entitled to the property as heiress of her husband; but her suit was dismissed, the deed of gift being found to be genuine. In a suit subsequently brought to recover the same property, on the ground that the plaintiff was heiress of her daughter, *held* by the majority of a Full Bench (GARTH, C.J., dissenting) that the suit was barred.

THIS case was referred by GARTH, C.J., and BIRCH, J., to a Full Bench in the following order of reference :—

GARTH, C.J.—In this case the plaintiff sues to establish her right to certain land as heiress of her daughter, the deceased wife of the defendant Denobundhoo, and the facts were as follows :—

The property in question originally belonged to the plaintiff's husband, and, some time after the marriage of their daughter, *viz.*, in the year 1262 (1855), the plaintiff's husband conveyed this property by deed of gift to the daughter as her stridhan. The

* Special Appeal, No. 373 of 1875, against a decree of Baboo Obhoy Churn Roy, the Subordinate Judge of Zilla Rungpore, dated the 4th of December, 1874, reversing a decree of Baboo Mothoora Lall Roy, the Munsif of Badiakhalee, dated the 19th of March, 1874.