

## APPELLATE CIVIL.

*Before Mr. Justice Glover and Mr. Justice R. C. Mitter.*

NIL MONEY SINGH DEO (PLAINTIFF) v. CHUNDERKANT  
BANERJEE (DEFENDANT).\*

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Mar. 21.

*Enhancement of Rent, Notice of—Tullubi Bromuttur Tenure—Regulation  
VIII of 1793, s. 51.*

A tullubi bromuttur tenure, which has been held as such from the time of the decennial settlement, is such an intermediate tenure as entitles the holder to a notice under s. 51, Reg. VIII of 1793.

SUIT for arrears of rent for the year 1278 (1871-1872) of Mouzah Charpotia, held by the defendant after notice of enhancement under s. 13, Act X of 1859.

The main defence was, that the mouzah in question was held by the defendant as a tullubi bromuttur tenure, and had been held as such from the date of the decennial settlement at a fixed rate of rent, and, therefore, the rent could not be enhanced on any of the grounds specified in s. 17; and the notice under s. 13 was, consequently, illegal and inapplicable to tenures of the nature of that held by the defendant.

The suit was dismissed in the first Court and also on appeal, and on special appeal to the High Court it was remanded for a distinct finding as to the nature of the defendant's tenure.

The Deputy Collector of Maunbhoom, on remand, found that the mouzah had been held from the time of the decennial settlement as a tullubi bromuttur tenure, and that, as the holder of such a tenure, the defendant had an intermediate holding between the proprietor of the estate and the ryots, and inasmuch as he should, therefore, be proceeded against under s. 51, Regulation VIII of 1793, the notice served on him under s. 13, Act X of 1859, was not sufficient. He, therefore,

\* Special Appeal, No. 149 of 1875, against a decree of the Judicial Commissioner of Zilla Chota Nagpore, dated the 21st of November 1874, affirming a decree of the Assistant Commissioner of Maunbhoom, dated the 26th of August 1874.

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dismissed the suit, and his finding and decision were affirmed on appeal by the Judicial Commissioner.

The plaintiff preferred a special appeal to the High Court, on the grounds, among others, that even admitting the tenure to be one contemplated by Regulation VIII of 1793, no particular form of notice was necessary, and the notice served was sufficient; and that the finding of the lower Courts, that the tenure was a *tullubi bromuttur* tenure, and had been held as such from the decennial settlement, did not bring the tenure within the class of talooks or tenures the rent of which could not be enhanced without service of notice on the holder under s. 51 of Regulation VIII of 1793.

The *Advocate-General*, offg. (Mr. Paul), Mr. Woodroffe, and Baboos *Umbica Churn Bose* and *Opendro Chunder Bose* for the appellant.

Baboo *Chunder Madhub Ghose* for the respondent.

The judgment of the Court was delivered by

GLOVER, J.—We cannot go behind the order of remand made by this Court on the 15th January 1874. The case was then sent back to the Assistant Commissioner “to have it distinctly tried what is the nature of the defendant’s tenure. On the finding on that issue will depend whether or not the plaintiff is entitled to recover in this suit on the notice which he has already served.”

Both the lower Courts have now found that the defendant’s tenure is a “*tullubi bromuttur* one,” held as such from the time of the perpetual settlement, and, therefore, such an intermediate tenure as entitles the holder to a notice under s. 51, Regulation VIII of 1793.

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There is, undoubtedly, evidence on the record showing that, at the time of the decennial settlement, the defendant’s holding was entered in the records as a *tullubi bromuttur* one paying a quit-rent of sicca Rs. 182-9, and that the Judicial Commissioner has found that this was the nature of the holding.

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In *Rajah Nilmoney Singh v. Chunder Cant Banerjee* (1), a case almost precisely similar to this and between the same parties, it was held that a tullubi bromuttur tenure was one that entitled the owner to notice under Regulation VIII of 1793. And in *Rajah Nilmoney Sing v. Ram Chuckerbutty* (2), the result was much the same. It was held in that case that the defendant's tenure, being found to represent a permanent transférable interest in the land intermediate between the proprietor of the estate and the ryots, came under the provision of the Regulation, and gave its owner the right to notice under the law of 1793. In that case also the plaintiff was the same person as the plaintiff in this case, and the defendants set up the same defence as that made in the present suit. This suit has, moreover, been twice remanded, so that it is hardly possible to conceive a case in which the plaintiff had a better opportunity to ascertain what his rights were and to bring them forward in a proper and legal manner.

It is argued that the evidence on which the Judicial Commissioner has relied does not prove that the defendant is an intermediate holder. This was a question of fact with which the Court below had exclusive power to deal, and it has not been in any way shown us that the finding was come to upon no evidence. It cannot indeed be said so in the face of the entry of this holding as a tullubi bromuttur one in the settlement papers of 1790.

It may be that the defendant has cultivated, or does cultivate some part of the holding himself, but this would not deprive him of his position as the holder of an intermediate tenure.

We think that the Judicial Commissioner has found upon sufficient legal evidence that the defendant holds an intermediate tenure, and upon this finding, as laid down in the remand order of 1874, depended the question whether the plaintiff was entitled to sue for enhanced rent under the notices he had already served.

The special appeal is dismissed with costs.

*Appeal dismissed.*

(1) 14 W. R., 251.

(2) 21 W. R., 439.