

CIVIL RULE.

Before Mr. Justice Mitra and Mr. Justice Caspersz.

JOGNESH PROKASH GANGULI

v.

MANIRADDI.*

1908
Jan. 2.

Bengal Tenancy Act (VIII of 1885) ss. 91, 188—Application for measurement by a landlord who is realising his rent separately, whether maintainable—Joint owner—Joint landlord.

Held, that if one set of landlords obtains separate kabuliats entering into separate contracts for rent with the tenants such landlords cease to be joint landlords with the other co-proprietors of the land. They become joint owners and not joint landlords.

Matungini Dassi v. Ramdas Mullick(1) and *Gobind Chandra Pal v. Hamidulla Bhuian*(2) referred to.

Held, further, that such a landlord is entitled to make an application for measurement of the land comprised in his estate under section 91 of the Bengal Tenancy Act.

RULE granted to the petitioners, Joguesh Prokash Ganguli and others, under section 622 of the Civil Procedure Code.

The petitioners, who were the owners of twelve annas share of a property, made an application to the Court of the Munsif at Lakshmipur, under section 91 of the Bengal Tenancy Act, for measurement of the land of the tenant. It appeared that they obtained separate kabuliats from the tenants, the opposite party Nos. 1 to 7, and they had been realising rents of their share separately. The opposite party, No. 8 who was the other co-sharer landlord, had also been realising his share of the rent separately from the tenants. The learned Munsif held that regard being had to the provisions of section 188 of the Bengal Tenancy Act, the application of the petitioners under section 91 of the said Act was not maintainable. Against this order the petitioners moved the High Court and obtained this Rule.

* Civil Rule No. 2119 of 1907.

(1) (1902) 7 C. W. N. 98.

(2) (1903) 7. W. N. 670.

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Babu Brojo Lal Chuckerbutty, for the petitioners. Section 188 of the Bengal Tenancy Act had no application to the facts of the present case. Here the landlords are not joint landlords. They cease to be so inasmuch as they had been realising their rents separately from the tenants under separate *Kabuliats*. The cases of *Matungini Dassi v. Ramdas Mullick*(1) and *Gobind Chandra Pal v. Hamidulla Bhuian*(2) support my contention.

Moulvie Syed Shamsul Huda (*Moulvie Nuruddin* with him), for the opposite party. Section 91 of the Bengal Tenancy Act is controlled by section 188 of the said Act. The petitioner being only a joint-landlord is not entitled to maintain an application under section 91 of the Bengal Tenancy Act.

MITRA AND CASPERSZ JJ. This is a Rule calling on the opposite party to show cause why the order passed by the Munsif of Lakshmipur, dated the 17th June, 1907, should not be set aside on the ground that it was illegal.

The petitioners made an application in the lower Court under section 91 of the Bengal Tenancy Act. They were 12 annas landlords and they obtained separate *kabuliats* from the tenants, the opposite party Nos. 1 to 7, with respect to their share, and they had been realising rents of their share separately from the co-sharer landlord, the opposite party No. 8. They asked for measurement of the land. The Munsif held that section 91 must be read with section 188 of the Bengal Tenancy Act and, reading the two sections together, the petitioners could not ask for measurement of the land, unless the opposite party No. 8 was also a petitioner.

If the petitioners and the opposite party No. 8 were joint landlords in the strict sense of the words, namely, if they gave joint receipts for rents received without any separate contracts of tenancy, the learned Munsif would have been right. But here the case is different. Section 91 only applies to the whole body of landlords, when they are joint landlords. Section 188 has no application when there is a separate contract in favour of one set of landlords. This has been pointed out by this Court in

(1) (1902) 7 C. W. N. 93.

(2) (1903) 7 C. W. N. 670

various cases. We need only refer to the cases of *Matungini Dassi v. Ramdas Mullick*(1) and *Gobind Chandra Pal v. Hamidulla Bhuian*(2). These are ample authorities for the proposition that, if one set of landlords obtains separate kabuliats entering into separate contract for rent with the tenant, such landlord ceases to be a joint landlord with the other co-proprietors of the land. He becomes a joint owner and not a joint landlord. That is the distinction which should be kept in mind in deciding cases like the present which would otherwise be covered by section 188. We accordingly set aside the order of the Munsif and direct him to proceed according to law in the matter before him, and deal with any other points that may arise in the case. The opposite party must pay to the petitioners the cost of this hearing.

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Rule absolute.

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