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In this view of the case, the payment of rates made by the appellant entitles him to a vote under the first clause of the proviso to section 15 of the Act.

For these reasons, I agree in decreeing this appeal with costs.

s. c. g.

Appeal allowed.

CIVIL RULE.

Before Mr. Justice Mookerjee and Mr. Justice Coxe.

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 Dec. 15.

ABDUL AZIZ

v.

KANTHU MALLIK.*

Land Registration—How far ss. 78 and 81 of the Land Registration Act (Beng. VII of 1876) affect s. 60 of the Bengal Tenancy Act—Estoppel—Estoppel against Act of Legislature—Land Registration Act (Beng. VII of 1876), ss. 78, 81—Bengal Tenancy Act (VIII of 1885), s. 60.

There can be no estoppel against an Act of the Legislature.
Jagabandhu Saha v. Radha Krishna Pal (1), followed.

Section 60 of the Bengal Tenancy Act governs a suit for rent where the plaintiff claims rent as proprietor of an estate, though rent is sought to be realised on the basis of a contractual obligation.

The restrictions imposed by section 81 upon section 78 of the Land Registration Act cannot be incorporated by implication into section 60 of the Bengal Tenancy Act.

The plaintiff, an unregistered part-proprietor of an estate, is not entitled to succeed as against the defendant, who, relying upon section 60 of the Bengal Tenancy Act, has established that his debt has been discharged by payment of rent to the registered proprietor.

CIVIL RULE obtained on behalf of the plaintiff.

The plaintiff claimed to be a part-proprietor of certain *taluks*, but his name was not registered for any share of

* Civil Rule, No. 3225 of 1910, against the order of B. B. Newbold, District Judge of Dacca, dated Feb. 2, 1910, confirming the order of Mati Lal Ray, Munsif of Manikgunge, dated July 12, 1909.

(1) (1909) I. L. R. 36 Calc. 920.

these *taluks* under the Land Registration Act, 1876. The defendant executed *kabuliyats* in the plaintiff's favour in 1299 and 1300 B.S. In 1307 B.S. the defendant attorned to one Mohinikanta, whose name had been registered for an eight-anna-odd share of these *taluks* and who had got exclusive title to the village in dispute by an amicable arrangement with the other registered co-sharers. The rent claimed in this suit for the years 1312 to 1314 B.S. had been paid by the defendant to Mohinikanta. Both the Courts below dismissed the plaintiff's suit on the ground that the payment by the defendant to the co-sharer, whose name was registered, in respect of a share operated as a full discharge of defendant's liability, and that, though he had executed *kabuliyats* in favour of the plaintiff, he was not bound to pay rents to him in spite of the provisions of sections 78 and 81 of the Land Registration Act. The plaintiff, thereupon, preferred a second appeal before the High Court. The appeal was dismissed on the ground that no such appeal lay. The plaintiff then moved the High Court and obtained this Rule.

Maulvi Syed Shamshul Huda (with him *Babu Kumar Shankar Ray*), in support of the Rule. Defendant is estopped from withholding payment of rent to the plaintiff, as it was he who let him into the land. Under section 116 of the Evidence Act the defendant cannot question the title of the plaintiff, and is therefore bound to pay him rent. Section 81 of the Land Registration Act qualifies section 78 of the Act, and, as it is a case of contract, there is no bar to his recovering rent. Section 81 also qualifies section 60 of the Bengal Tenancy Act, and the defendant is not exonerated, nor is he entitled to prove payment of rent to the registered proprietor—especially the whole rent to a fractional proprietor. Section 60 of the Bengal Tenancy Act has no application because—(i) rent is claimed in pursuance of a contract, (ii) section 60 of the Bengal Tenancy Act is subject to the limitation imposed upon section 78 by section 81 of the Land Registration Act, and (iii) the proprietor to whom rent has been paid is registered in respect of a fractional share.

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Babu Harakumar Mitra (with him *Babu Heeralal Bose*), showed cause. There is no denial of the plaintiff's title, but there is a statutory bar to recovery of rent, and therefore there can be no estoppel. The contract is not for the term for which rent is claimed. It has created a tenancy from year to year with the legal incidents. The suit is for rent by the proprietor as landlord against his tenant, and not for compensation for breach of contract by the contractee. The debt is discharged by payment to the registered proprietor, and the remedy of the plaintiff, if any, lies against the registered proprietor, as provided for by the section. The restrictions imposed by section 81 upon section 78 of the Land Registration Act cannot be extended to section 60 of the Bengal Tenancy Act. The proprietor to whom rent has been paid by the defendant is registered in respect of his share, but is at the same time in possession of the entire *taluks* by some sort of arrangement, as we find, from the other registered proprietors, and the payment to him is a valid discharge of the debt.

MOOKERJEE AND COXE JJ. We are invited in this Rule to set aside a decree by which the Court of appeal below in concurrence with the Court of first instance has dismissed a suit for rent. The plaintiff alleged that the disputed holdings are situated within Taluks Nos. 4424 and 4425, of which he is a part-proprietor; that on the 25th July 1892 and the 5th December 1893 the defendant executed two *kabuliyats* in his favour and was inducted into the land; that he consented to a decree for arrears for the year 1302, but that subsequently he has attorned to one Mohinikanta and withheld rent for the years 1312 to 1314. The defendant resisted the claim broadly on the ground that the plaintiff had no title to the property, that he was not entitled to realise any rent, as his name had not been registered under section 78 of the Land Registration Act, and that, in any event, as the defendant had paid rent to Mohinikanta, who had been duly registered, there was a complete defence to the claim of the plaintiff. The Courts below have held that section 81 of the Land Regis-

tration Act, though it qualifies section 78 of the same Act, has no application to a case under section 60 of the Bengal Tenancy Act, and that consequently it is open to the defendant to prove payment of rent to the registered proprietor and to plead that the plaintiff has consequently no enforceable right as against him.

The plaintiff has assailed this decision on two grounds, namely, *first*, that as the defendant was inducted into the land by the plaintiff, on the principle of estoppel, embodied in section 116 of the Indian Evidence Act, the defendant cannot question the title of the plaintiff, and is therefore bound to pay him rent; and, *secondly*, that section 60 of the Bengal Tenancy Act is qualified by the provisions of section 81 of the Land Registration Act, and that therefore the defendant is not entitled to prove payment of rent to the registered proprietor.

In so far as the first of these contentions is concerned, it is obvious that there is no substance in it, because it is well-settled that there can be no estoppel against an Act of the Legislature. In support of this proposition, reference may be made to the decision of the Madras High Court in *The Madras Hindu Mutual Benefit Permanent Fund v. Ragava Chetti* (1), where Mr. Justice Subramania Ayyar relied upon *Barrow's Case* (2), and *Fairtitle v. Gilbert* (3). To the same effect is the decision of this Court in *Jagabandhu Saha v. Radha Krishna Pal* (4). [See also the observations of Maclean C.J. in *Jogini Mohan Chatterjee v. Bhoot Nath Ghosal* (5) and of Baron Parke in *Hill v. The Manchester and Salford Water Works Company* (6); see, further, *Doe v. Ford* (7), *Doe v. Howells* (8), *Gas Light Co. v. Turner* (9), *Doe v. Hares* (10), and *Glasgow v. Independent Co.* (11)]. We are therefore not

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(1) (1895) I. L. R. 19 Mad. 200. (6) (1831) 2 B. & Ad. 544, 553.

(2) (1880) 14 Ch. D. 432. (7) (1835) 3 Ad. & El. 649.

(3) (1787) 2 T. R. 169. (8) (1831) 2 B. & Ad. 744.

(4) (1909) I. L. R. 36 Calc. 920. (9) (1840) 6 Bing. N. C. 324.

(5) (1903) I.L.R. 31 Calc. 146, 149. (10) (1833) 4 B. & Ad. 435.

(11) (1901) 2 I. R. 279, 311.

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prepared to accede to the argument of the learned Vakil for the petitioner that the principle of estoppel overrides the provisions of either section 78 of the Land Registration Act or section 60 of the Bengal Tenancy Act. The first contention of the petitioner therefore fails.

In so far as the second contention of the petitioner is concerned, it has been argued that section 60 of the Bengal Tenancy Act is not applicable, *first*, because rent is claimed by the plaintiff, not as proprietor of an estate, but under the terms of an agreement between himself and the defendant; *secondly*, because section 60 ought to be construed as subject to the same limitation as is imposed upon section 78 of the Land Registration Act by section 81 of that Act, and, *thirdly*, because the payment alleged to have been made by the defendant was made as a matter of fact to a person registered as proprietor in respect not of the entire superior interest, but of only a fractional share.

In so far as the first branch of this contention is concerned, there is no force in it. No doubt the plaintiff seeks to realise rent on the basis of a contractual obligation, but it is equally obvious that he claims rent as proprietor of two *taluks*.

In so far as the second branch of the contention is concerned, we are not prepared to accede to the argument that section 60 is to be read subject to the limitation imposed by section 81 of the Land Registration Act upon section 78. Section 78 of the Land Registration Act provides that no person shall be bound to pay rent to any person claiming such rent as proprietor of an estate in respect of which he is required by the Act to cause his name to be registered, unless the name of such claimant shall have been registered under the Act. Section 81 then provides that nothing in the three preceding sections shall be held to interfere with the conditions of any written contract. It may be conceded, therefore, that the effect of the disability imposed upon the proprietor, who has failed to register his name under section 78 of the Land Registration Act, ceases when that proprie-

tor sues to recover rent under a registered instrument. Section 60 of the Bengal Tenancy Act, on the other hand, provides that, where rent is due to the proprietor of an estate, the receipt of the person registered under the Land Registration Act as proprietor shall be a sufficient discharge for the rent. The question therefore narrows down to this—whether the protection which was intended to be afforded to the tenant under section 60 of the Bengal Tenancy Act extends to a case where the plaintiff claims to recover rent under an instrument in writing. In our opinion it is reasonably plain that the restriction imposed by section 81 upon section 78 of the Land Registration Act cannot be incorporated by implication into section 60 of the Bengal Tenancy Act.

In so far as the third branch of the contention of the learned Vakil for the petitioner is concerned, we are of opinion that it cannot be maintained in view of the decision of this Court in the cases of *Parashmoni Dassi v. Nabokrishore Lahiri* (1), and *Deoki Singh v. Lakshman Roy* (2). It was held in these cases that the Land Registration Act provides for the registration by proprietors of their shares in an estate, but does not make it incumbent upon them to register their shares in specific mouzahs or portions of land within the estate. In other words, if a proprietor is registered in respect of a certain share in an estate, and then, by an amicable arrangement amongst the co-owners, becomes entitled to collect the whole rent in respect of a particular village included within the estate, the provisions of section 78 of the Land Registration Act do not operate as a bar to the recovery of such rent. It may be observed that in the case before us there is no contest between two persons, both of whom are registered as proprietors under the Act. The plaintiff admittedly is not registered under the Land Registration Act. The person set up by the defendant as registered proprietor has his name registered in respect of certain shares. But it is alleged and proved that by amicable arrangement amongst the co-owners, that is, by amicable arrangement amongst the

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(1) (1903) I. L. R. 30 Calc. 773. (2) (1903) I. L. R. 30 Calc. 880.

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registered proprietors, this person is entitled to the whole rent of the *taluk* within which the disputed land is situated. What the precise position might have been if there had been a contest between two persons, both of whom were registered under the Act, need not be considered on the present occasion. It is sufficient to say that the plaintiff is not entitled to succeed as against the defendant, who, relying upon section 60 of the Bengal Tenancy Act, has established that his debt has been discharged by payment of rent to the registered proprietor.

The result therefore is that the decree made by the Court below must be affirmed, and this Rule discharged, with costs. We assess the hearing fee at one gold mohur.

S. M.

Rule discharged.

APPELLATE CIVIL

Before Mr. Justice Chitty and Mr. Justice N. R. Chatterjya.

1911
 Feb. 23.

ABDUL AZIZ

v.

FATEH MAHOMED HAJI.*

Mahomedan Law—Gift—Mushaa.

Where the defendant made a gift of a four-anna share in a *kaimi rayati* holding to the plaintiff his nephew by marriage and admitted him to joint possession with himself, and recognised the plaintiff as being in such possession for 14 years:—

Held, that he could not be allowed to say that there had been no valid gift. The doctrine of *mushaa* is not applicable to such a case.

Ibrahim Goolum Ariff v. Saiboo (1), *Emnabai v. Hajirabai* (2), *Jiwan Bakhsh v. Imtiaz Begam* (3), *Muhammad Muntaz Ahmad v. Zubaida Jan* (4) referred to.

* Appeal from Appellate Decree, No. 490 of 1909, against the decree of Jogendra Nath Bose, Subordinate Judge of Noakhali, dated Jan. 5, 1909, modifying the decree of Rash Behari Mookerjee, Munsif of Noakhali, dated May 16, 1908.

(1) (1907) I. L. R. 35 Calc. 1.

(3) (1878) I. L. R. 2 All. 93.

(2) (1888) I. L. R. 13 Bom. 352.

(4) (1889) I. L. R. 11 All. 460.