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poration have obtained any powers to set apart this place for the discharge of drainage. We, therefore, think that it is still private property of the zemindar, and that the petitioner who is merely a tenant cannot be called upon to alter his connecting drain to suit the convenience of the Corporation. He certainly cannot be fined for neglecting to do so.

The Rule is made absolute and the order of the Municipal Magistrate discharged. The fine, if paid, must be refunded.

E. H. M. *Rule absolute.*

PRIVY COUNCIL.

JATINDRA NATH CHOWDHRI

v.

PRASANNA KUMAR BANERJEE.

(AND FOUR OTHER APPEALS CONSOLIDATED.)

*P.C.**
1910
Nov. 1,2,15.

[On appeal from the High Court at Fort William in Bengal.]

Bengal Tenancy Act (VIII of 1885) s. 188—Suit for enhancement of rent—Suit by one co-sharer making defendants other co-sharers who refused to join as plaintiffs—Meaning of "act together—" Suit for arrears of rent—Suits expressly authorised by Bengal Tenancy Act—Suits not requiring authority of Act—Bengal Tenancy Act, ss. 7 and 30.

The institution of a suit for enhancement of rent, being a suit authorised by the Bengal Tenancy Act (VIII of 1885), is something which "a landlord is required or authorised to do" under the Act within the meaning of section 188, and consequently a thing in which all the "joint landlords" must "act together," that is, take common action. Such a suit, therefore, is only properly framed when all the joint landlords are made plaintiffs. It is not sufficient for one or some of the joint landlords to sue as plaintiff or plaintiffs and make those who refuse to join with him or them defendants in the suit.

Pramada Nath Roy v. *Ramani Kanta Roy* (1) distinguished.

It is otherwise with a suit for arrears of rent, the bringing of which is not a thing which the landlord is, under the Bengal Tenancy Act, either required or authorised to do. Rent in arrear is a debt the right to recover which arises under the general law, and does not require the authority of the Bengal Tenancy Act; and that Act does not authorise

* *Present*: LORD MACNAGHTEN, LORD MERSEY, LORD ROBSON, SIR ARTHUR WILSON and MR. AMEER ALI.

(1) (1907) I. L. R. 35 Calc. 331; L. R. 35 I. A. 73.

such a suit, though, on a decree being obtained, consequences may follow which result from the provisions of the Act, and from those provisions alone.

FIVE consolidated appeals from decrees (18th July, 1st August, and 18th August, 1904), of the High Court at Calcutta, which dismissed appeals from judgments and decrees (8th February, 1904), of the District Judge of Alipur, affirming decrees (28th June, 1899), of the Munsif of Alipur.

The plaintiffs were the appellants to His Majesty in Council.

The five appeals arose out of five different suits instituted in the Munsif's Court, of which four were for recovery of arrears of rent and for enhancement of rent, and one for enhancement of rent only. So far as the claims for arrears of rent were concerned, the plaintiffs obtained decrees; and the only question arising in these consolidated appeals, was as to their right to obtain decrees for enhancement in the suits as framed.

The plaintiffs claimed to be the sole proprietors of a zemindari estate separately assessed to Government revenue, and consisting of two mahals numbered 166 and 166/1 in the Collectorate register. The original defendants in the suits were tenants of lands forming a part of the plaintiffs' zemindari and the plaintiffs alleged that they were, as such, liable to pay a fixed and definite sum as rent to the plaintiffs alone; that they (the plaintiffs) had received for a considerable time past, and still continued to receive such fixed and definite sum: and that the rents were below the proper rate and were liable to enhancement.

The only defence now material was that the plaintiffs were not the sole proprietors of the estate, and that their co-sharers not having been made parties the suits were not maintainable: and when the suits first came on for hearing, on 15th May, 1897, the Munsif, holding that though the rent had been paid separately, the lands were undivided, dismissed the suits on the above ground.

On appeal to the Subordinate Judge of the 24-Parganas the suits were, as regards the question of enhancement, remanded for trial of the issue whether the plaintiffs were, or

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were not, co-parceners with others, and it was, on 21st December, 1908, found by the Munsif that they were; and their co-sharers (who were the owners of four other zemindari estates separately assessed to Government revenue, and numbered as mahals 136, 163, 168 and 222 in the Collectorate register) were added as *pro formâ* defendants to the suits, the order to that effect being affirmed by the District Judge of the 24-Parganas on appeal on 18th February, 1899.

On 28th June, 1899, when the hearing of the suits (as so amended) was continued by the Munsif, he held that the plaintiffs as "fractional landlords," could not maintain the suits for enhancement of rent as the co-sharers being defendants did not join with the plaintiffs in their claim, but in fact contested it, and therefore, so far as the right to enhance the rent was concerned, he dismissed the suits.

The plaintiffs appealed from that decision, and the appeals came before another District Judge of the 24-Parganas who, on 12th Mary, 1900, after referring to the estates (mahals 166 and 166/1) of which the plaintiffs claimed to be proprietors, said:—

"These two estates and four other estates hold a large quantity of land in common; there has been no partition of such land by metes and bounds; nor has there been any proportionate division of the rents of such land according to any definite shares; but the tenants of such lands pay their rent in certain fixed sums to the proprietors of the several estates. It has been found and it is no longer open to dispute that such is the mutual position of the proprietors, (the plaintiffs) and the tenure-holders (the defendants) in this suit (whatever the origin of it may have been) for the defendants tenure is composed of such common land."

He was of opinion that by the judgment of 18th February 1899, the then District Judge had decided that the co-sharer landlords must be added as parties plaintiffs in order to make a suit for enhancement of rent maintainable; that having only been joined as defendants the judgment was not complied with; that the said judgment constituted a *res judicata* upon the whole question; and that to decree the appeals would be to overrule that judgment which he had no power to do: and on these grounds he dismissed the appeals.

The appeals then came before a Divisional Bench of the High Court (Sir F. W. Maclean C.J. and Geidt J.) who on 25th August, 1903, at the instance of the plaintiffs, remanded the cases to ascertain whether there had been any partition, not by metes and bounds, but of one estate into six separate estates with a proportionate allotment of rents to such separate estates.

The appeals came on remand before another District Judge, and he, on 8th February, 1904, decided that there had been no partition, and dismissed them with costs.

The plaintiffs again filed appeals from these decrees which the High Court (Rampini and Saroda Charan Mitter JJ.) dismissed summarily under section 551, read with section 587 of the Code of Civil Procedure (Act XIV of 1882).

An application for leave to appeal to His Majesty in Council having been rejected by the High Court, the plaintiffs applied for, and on 16th February obtained, special leave to appeal against the decrees of the High Court as above stated, and also against the order of remand of 25th August, 1903.

On these appeals,

DeGruyther, K.C., and *A. M. Dunne*, for the appellants, contended that they were entitled to maintain the suits. The mahals of which they were proprietors formed separate estates; they were separately entered in the Collectorate register; bore separate tauji numbers; had a separate assessment for the Government revenue payable in respect of them, and a separate rental payable by the tenants thereof. These facts raised, it was submitted, a presumption of law that the appellants were separate and divided owners of their mahals, and being entitled to collect their rents separately were also entitled to enhance them when necessary. Reference was made to *Hem Chandra Chowdhry* v. *Kali Prasanna Bhaduri* (1). The appellants were not joint landlords. But even assuming they were, the addition of their co-sharers by the Court as defendants en-

(1) 1899) I. L. R. 26 Calc. 832.

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titled them to maintain the suits as well for enhancement as for arrears of rent. The claims for arrears of rent had been decreed the rent being due to them separately, and it followed in law that they were entitled to enhance those rents separately, and to maintain a suit for that purpose. It had been held that one of several co-sharers could maintain a suit for arrears of rent making the other co-sharers parties defendants, if they refused to join as plaintiffs: see *Pramada Nath Roy* v. *Ramani Kanta Roy* (1), and a suit for enhancement, it was submitted, could also be maintained framed in the same way. On the principle laid down in that case section 188 of the Bengal Tenancy Act (VIII of 1885) did not make it necessary for the co-sharers to be added as plaintiffs, the bringing of a suit not being a thing which joint landlords were "required or authorised to do" under that Act. The right to bring a suit existed outside the Act. The construction of section 188 was not intended to alter the relation of landlord and tenant as it previously existed under the former Rent Acts (X of 1859 and Bengal Act VIII of 1869). Reference was made to section 187 of the Bengal Tenancy Act. [LORD MACNAGHTEN referred to the case of *Bank of England* v. *Vagliano* (2), per Lord Herschell as to the proper course in constructing a statute] Bengal Tenancy Act, sections 7, 30, clauses (*a*) and (*b*), 65, 66 and 68 were cited. The provisions as to the other co-sharers being parties to the suit were intended to bring all parties interested before the Court, and should not be construed that they were all to be made plaintiffs, a construction which would often defeat the right of one co-sharer, who could not compel the others to be plaintiffs in case they refused to join him as plaintiffs. If they refused he could, it was submitted, make them defendants; see *Pyari Mohan Bose* v. *Kedarnath Roy* (3). Bengal Tenancy Act, section 54, sub-section (*3*), sections 143, 159, 162, and (as to limitation) section 184 and schedule III were also referred to.

(1) (1907) I. L. R. 35 Calc. 331, 344, 345; L. R. 35 I. A. 73, 77, 78.

(2) [1891] A. C. 107, 144, 145.

(3) (1899) I. L. R. 26 Calc. 409.

As to partition it was to be effected by apportioning the rent to be paid by the various tenants, and not, as a rule, by splitting up the lands: Bengal Estates Partition Act (Bengal Act V of 1897) section 3, sub-section (5), and sections 4 and 81, and Bengal Tenancy Act Amendment Act (Bengal Act I of 1907) section 58 (amending section 188 by the addition of a section 188 A) were cited. The suits were remanded by the High Court (unnecessarily as the appellants contended) for further evidence as to whether there had been partition or not, but the appellants had been refused an extension of time they asked for to obtain it.

Ross, for the respondent Prasanna Kumar Banerji (who was concerned only with the suits for enhancement of rent), contended that the institution of such a suit, was, on its true construction, included in section 188 of the Bengal Tenancy Act as being something in which "joint landlords were required and authorised" by the Act to join. That construction of the section was confirmed by the following authorities: *Baidya Nath De Sarkar* v. *Ilim* (1), *Guni Mahomed* v. *Moran* (2), *Beni Madhub Roy* v. *Jaod Ali Sircar* (3), *Gopal Chunder Das* v. *Umesh Narain Chowdhry* (4), *Moheeb Ali* v. *Ameer Rai* (5), and *Haladhar Saha* v. *Rhidoy Sundri* (6). The case of *Pramada Nath Roy* v. *Ramani Kanta Roy* (7), was distinguishable on the ground that a suit for arrears of rent could be brought under the general law, irrespective of the Bengal Tenancy Act; but a suit for enhancement of rent, was specially provided for by that Act (see sections 7 and 30) and could only be brought under its provisions. Section 86 of the Act was also cited. The case of *Hem Chandra Chowdhry* v. *Kali Prasanna Bhaduri* (8), was not applicable, as in the present case there had been no partition, a fact which had been found against the appellants. The suits had been rightly dismissed

(1) (1897) I. L. R. 25 Calc. 917.
(2) (1878) I. L. 4 Calc. 96.
(3) (1890) I. L. R. 17 Calc. 390, 392.
(4) (1890) I. L. R. 17 Calc. 695.
(5) (1890) I. L. R. 17 Calc. 538.
(6) (1892) I. L. R. 19 Calc. 593.
(7) (1907) I. L. R. 35 Calc. 331; L. R. 35 I. A. 73.
(8) (1899) I. L. R. 26 Calc. 832.

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by the High Court under sections 551 and 587 of the Civil Procedure Code of 1882.

DeGruyther, K.C., replied.

The judgment of their Lordships was delivered by

LORD MACNAGHTEN. This litigation, which is the outcome of five different suits, has lasted for the period of fifteen years. It is not necessary to explain its origin or to trace its course which has certainly been leisurely and somewhat devious. Nothing now remains to be determined but a question of general importance:— N

Does the Bengal Tenancy Act, 1885, prohibit one or some of two or more joint landlords from suing to enhance the rent unless both or all of the "fractional landlords" as they are sometimes called, join in the suit as co-plaintiffs?

Section 188 declares that "where two or more persons are joint landlords, anything which the landlord is under this Act required or authorised to do must be done . . . . by both or all those persons acting together . ."

The question therefore divides itself into two branches: (*i*) Is the institution of a suit to enhance rent, a thing which the landlord is under the Act authorised to do? And (*ii*) What is the meaning of the words "acting together"?

To take that expression first, it seems to their Lordships that it means just what it says. In order to comply with the Act the persons referred to must take common action. It was argued that it is enough if one of the joint landlords sues as plaintiff and makes those who do not concur with him defendants. In plain words the proposition is that if a person is made a defendant because he is unwilling to act together with the plaintiff he is to be deemed to be acting together with the plaintiff when once he is placed on the record as defendant. It is enough to state the proposition to dispose of it.

Then comes the question, is a suit to enhance rent a thing authorised under the Act? It is so plainly in the case of an occupancy raiyat. The authority is given expressly in section 30. It is so also in the case of tenure holders though the

language is not so explicit. Section 7 (1) provides that in the cases where the rent of the tenure holder is liable to be enhanced it may (subject to any contract between the parties) be enhanced up to a certain specified limit. Now rent can only be enhanced by instituting a suit for that purpose; and therefore it seems tolerably clear that the institution of a suit for enhancement of rent is a thing authorised by the Act in the case of tenure holders as well as in the case of occupancy raiyats.

It was argued that a suit to enhance rent stands on the same footing as a suit for arrears of rent, and that inasmuch as a suit for arrears of rent may be brought by one joint landlord making the other joint landlords defendants [as was decided in the case of *Pramada Nath Roy* v. *Ramini Kanta Roy* (1)], a similar course may be adopted in a suit to enhance rent. But the answer is that the bringing of a suit for arrears of rent is not a thing which the landlord is under the Act either required or authorised to do. Rent in arrear is a debt. The right to recover a debt arises under the general law. A suit for recovery of rent does not require the authority of the Bengal Tenancy Act, nor does the Act purport to authorise such a suit, though on a decree being obtained consequences may follow which result from the provisions of the Act and from those provisions alone.

Their Lordships therefore think that the judgment of the High Court dismissing these suits was quite right, and they will humbly advise His Majesty accordingly.

The appellants will pay the costs of the appeal.

Appeal dismissed.

Solicitors for the appellants: *T. L. Wilson & Co.*

Solicitor for the respondent, Prosanna Kumar Banerji: *Douglas Grant.*

J. V. W.

(1) (1907) I. L. R. 35 Calc. 331; L. R. 35 I. A. 73.