

## APPELLATE CIVIL.

---

*Before Justice Sir Richard Harington and Justice Sir Asutosh Mukherjee.*

BIRENDRA KISHORE MANIKYA

1912

v.

March 14.

BHUBANESWARL.\*

*Landlord and Tenant—Ejectment—Recorded tenant—Effect of denial of tenancy by him on his unrecorded co-sharer—Forfeiture.*

In a suit for ejectment based on the ground of forfeiture by reason of the denial of the landlord's title, it was found that the denial was by the recorded tenant and not by his unrecorded co-sharers in the tenancy :

*Held*, that a person, representing the tenancy in the books of the landlord, was entitled to bind his co-sharers for the purposes of the tenancy ; but when he repudiated the tenancy, he must be taken to have acted beyond the scope of his authority ; his disclaimer, consequently, could not operate as a forfeiture of the tenancy.

SECOND APPEAL by Maharaja Birendra Kishore Manikya Bahadur, the plaintiff.

Defendants Nos. 1, 2 and 3 were the owners of a holding in the plaintiff's zamindari, but only defendant No. 1 was recorded as tenant in the plaintiff's books. The plaintiff had in 1904 instituted a suit against defendant No. 1 for rent due in respect of the holding, but on his denial of the plaintiff's title as landlord the suit was dismissed in 1905. The plaintiff then instituted the present suit in 1908 against the defendants for recovery of *khas* possession of the land, on the ground that, by reason of the defendant's denial of the plaintiff's title as landlord, the tenancy was forfeited. In

\* Appeal from Appellate Decree, No. 322 of 1910. against the decree of Jogendra Nath Bose, Subordinate Judge of Noakhali, dated Nov. 18, 1909, modifying the decree of Subodh Kumar Bhattacharjee, Munsif of Feni, dated March 8, 1909.

1912

BIRENDRA  
KISHORE  
MANIKYA  
v.  
BHUBANES-  
WARL.

the alternative the plaintiff prayed for assessment of rent under section 157 of the Bengal Tenancy Act.

The Munsif found that inasmuch as there was a dispute as to the area and boundaries of the land comprised in the suit for rent, the defence of the defendant No. 1 in that suit was *bonâ fide* and that the defendants Nos. 2 and 3 had never denied the plaintiff's title, and so the tenancy could not be forfeited. Upon these findings he dismissed the suit for *khas* possession. On the question of assessment of rent the Munsif refused to pass a decree in favour of the plaintiff, on the ground that the plaintiff had not included in the suit a portion of the land comprised in the defendant's holding.

On appeal, the Subordinate Judge held that though the denial by defendant No. 1 of the plaintiff's title could not affect the position of his co-sharers—the defendants Nos. 2 and 3—the tenancy, so far as defendant No. 1 was concerned, was forfeited, and that the plaintiff was entitled to *khas* possession as against that defendant. The learned Subordinate Judge passed a decree for ejectment against defendant No. 1 only, and dismissed the suit against defendants Nos. 2 and 3.

The plaintiff, thereupon, preferred this second appeal to the High Court.

*Babu Dwarkanath Chuckerbutty* and *Babu Gobinda Chandra Dé Roy*, for the appellant.

*Babu Khitish Chandra Sen*, for the respondents.

HARINGTON AND MOOKERJEE JJ. This is an appeal on behalf of the plaintiff in a suit for ejectment, and, in the alternative, for assessment of rent under section 157 of the Bengal Tenancy Act.

It appears that the first defendant alone is registered as tenant in respect of the disputed land in the books of the landlord, though the second and the

third defendants also are jointly interested in the tenancy. The plaintiff sued the first defendant for recovery of arrears of rent. That defendant denied the title of the plaintiff, and the result was that the action for rent was dismissed. The plaintiff now sues to eject all the defendants on the ground that the tenancy has been forfeited by disclaimer. He also prays that, if the tenancy has not been forfeited, fair and equitable rent may be assessed.

The Court of first instance declared the title of the plaintiff, but dismissed the claim both for possession and assessment of rent. Upon appeal by the plaintiff, the Subordinate Judge has declared that the title of the first defendant as tenant has been forfeited ; but he has held that the plaintiff is not entitled to a decree for possession, as the second and third defendants are not liable to be ejected.

In the present appeal, it has been argued on behalf of the plaintiff that the tenancy has been forfeited, and that he is entitled to eject all the three defendants. It has been contended in substance that as the first defendant was allowed by the co-sharers to represent them in the books of the landlord, the disclaimer by him operates as a forfeiture of the tenancy in respect of all the persons interested therein. In our opinion, this argument is obviously fallacious.

It may be conceded that as the first defendant represented the tenancy in the books of the landlord, he was entitled to bind his co-sharers for the purposes of the tenancy ; but when he repudiated the tenancy, he must be taken to have acted beyond the scope of his authority. Consequently, his disclaimer cannot operate as a forfeiture of the tenancy in so far as the second and third defendants are concerned. It is further clear that there cannot be a forfeiture of the tenancy in part. The position, therefore, is that the

1912

BIRENDRA  
KISHORE  
MANIKYA  
v.  
BHUBANES-  
WARL.

1912  
 BIRENDRA  
 KISHORE  
 MANIKYA  
 v.  
 BHUBANES-  
 WARI.

tenancy still subsists, and the suit for ejectment must fail. But there is no reason why the plaintiff should not realise rent from all the defendants on the footing that the tenancy still continues.

The result is, that the decree of the Subordinate Judge is discharged; and in lieu thereof it is declared that the claim for ejectment must be dismissed. The case is remanded to the Court of first instance, in order that the plaint may be amended and the rent payable in respect of the tenancy determined. The defendants are entitled to their costs of this appeal as also of the appeal before the Subordinate Judge. The costs in the Court of first instance will abide the result.

S. K. B.

*Case remanded.*

---

## APPELLATE CIVIL.

---

*Before Justice Sir Cecil Brett and Mr. Justice Carnduff.*

1912  
 March 19.

TRINAYANI DASI

v.

KRISHNA LAL DE.\*

*Court-fee—Court-fees Act (VII of 1870), s. 8 and Sch. II, Art. 17, cl. vi—Land Acquisition Act (I of 1894), s. 32—Land Acquisition Judge, order of—Appeal—Debutter property—Memorandum of appeal—Ad valorem fee—Award.*

A certain *debutter* property having been acquired under the Land Acquisition Act, the compensation money allowed by the Collector was deposited in Court. One *T* applied to withdraw that amount on the ground that she was entitled to it as executrix to the will of her late husband. On objection by one *K* that the money in deposit should be invested in Government securities and only the interest should be paid over to the *shebait*,

\* APPEALS from Original Decrees, Nos. 135 and 136 of 1910, against the decree of A. Goodeve, Special Land Acquisition Judge of 24-Parganas, dated Nov. 15, 1909.