APPELLATE CIVIL.

Before Justice Sir Richard Harington and Justice Sir Asutosh Mookerjee.

NIM CHAND SAHA

v.

JOY CHANDRA NATH.*

1912

March 7.

Under-raiyat—Bengal Tenancy Act (VIII of 1885), s. 48—Holding of under-raiyat.

Section 48 of the Bengal Tenancy Act applies to cases in which the land held by the raiyat is co-extensive with the land held by the under-raiyat.

SECOND APPEAL by the plaintiff, Nim Chand Saha.

It arises out of a suit for rent of an under-raiyati holding.

The plaintiff is the occupancy raiyat of a holding containing 12 kanis and 13 gandas of land. The lands are classified in the lease creating the plaintiff's tenancy, and rent is assessed at rates varying from Re. 1 to Rs. 2-4 a kani, the aggregate rent being stated to be Rs. 21-14 a year. The defendants are under-raiyats under the plaintiff under a lease of one of these plots only, the rent whereof was assessed at Rs. 2-4 a kani in the plaintiff's lease.

On a previous occasion the plaintiff sued the defendant for ejectment, when the latter pleaded that he held the land at an annual rental of Rs. 10.

In the present suit the plaintiff claims rent at the rate of Rs. 14 a year. The defendants answer that under section 48 of the Bengal Tenancy Act the plaintiff is not entitled to claim rent at a rate higher than Rs. 3-5-7.

* Appeal from Appellate Decree, No. 168 of 1910, against the decree of G. N. Roy, District Judge of Tipperah, dated Oct. 11, 1909, modifying the decree of Amulya Gopal Roy, Munsif of Comillah, dated March 29, 1909.

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The first Court gave a decree to the plaintiff at the rate of Rs. 10 a year. On appeal, the District Judge allowed the contention of the defendants. The plaintiff, thereupon, preferred this second appeal to the High Court.

Babu Tarakishore Chowdhuri (with him *Babu Gopal Chandra Das*), for the appellant, submitted that section 48 of the Bengal Tenancy Act did not apply to a case in which the raiyat let out to his under-tenant only a portion of his holding because a holding usually comprises different classes of land, one parcel may be the best of the holding while the rest may fetch only a nominal rent. There is no reason why the raiyat should not be allowed to realise for the best part of his land rent more than 50 per cent. in excess of what he himself pays to his superior landlord. Reliance was placed upon a decision of Geidt J. (second appeal No. 415 of 1903, decided 3rd June 1904).

Babu Birendra Chandra Dass, for the respondent. Section 48 of the Bengal Tenancy Act does not say that it is applicable only where the holdings of the under-tenant and that of his landlord are co-extensive, and not to a case where the under-raiyat holds only a parcel of the land held by his landlord. The test is if there are any data from which the rent payable by the landlord of the under-raiyat to his superior landlord for the parcel of land let out to the under-raiyat can be determined. If it cannot be, section 48 would apply. But if it can be ascertained, there is no reason why section 48 should not be applicable: see the decision of Geidt J. in S. A. No. 415 of 1903, decided 3rd June 1904 (unreported). If the section were to apply only where the holdings of the under-raiyat and that of his landlord are co-extensive and not where the under-raiyat holds a portion of the land held by his

landlord, the policy of Legislature would be defeated. In this way the landlord of the under-raiyat has only to split up his holdings into several plots and then sublet them, in order to evade the provisions of the section. The section is intended for the protection of the under-raiyat, and it must therefore be so construed as to satisfy and not to defeat this intention of the Legislature.

HARINGTON AND MOOKERJEE JJ. This is an appeal on behalf of the plaintiff in an action for rent. The sole point in controversy relates to the rate at which the plaintiff is entitled to realise rent in view of section 48 of the Bengal Tenancy Act. The plaintiff is an occupancy raiyat and the defendants are under-raiyats under him. The defendants were on a previous occasion sued in ejectment; they then pleaded that they held these lands on payment of rent at the rate of Rs. 10 a year. On the present occasion, the plaintiff claims at the rate of Rs. 14 a year. The defence is that under section 48 of the Bengal Tenancy Act he is not entitled to claim rent at a higher rate than Rs. 3-5-7. This contention was overruled by the Court of first instance and a decree was made at the rate of Rs. 10 a year. Upon appeal, the District Judge has allowed the contention of the defendants to prevail. The question raised is apparently one of first impression, and the solution must depend upon the true construction of section 48.

The plaintiff has an occupancy holding which contains 12 kanis and 13 gandas of land. In his lease the lands are classified and rent is assessed at rates varying from Rs. 2-4 to Re. 1 a kani; the aggregate rent is stated to be Rs. 21-14 a year. The defendants have taken a lease of one of these plots only, the rent whereof was assessed at Rs. 2-4 a kani in the lease of the plaintiff.

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The contention of the defendant is that under section 48, clause (*b*), the plaintiff is not entitled to recover rent at a rate in excess of Rs. 2-13 a kani. In our opinion, there is no foundation for this contention.

Section 48 of the Bengal Tenancy Act provides that the landlord of an under-raiyat holding at a money rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than 25 per cent. It will be observed that the section does not expressly mention the land held by the under-raiyat, but the meaning plainly is that the landlord of the under-raiyat who holds under a money rent is not entitled to recover rent exceeding by more than a quarter the rent which he himself pays in respect of the land let out to the under-raiyat. It has not been disputed that in cases in which the land comprised in the holding of the raiyat is of different qualities and there is no indication to show at what rates the various classes of lands were assessed, section 48 cannot be made applicable, if only a part of the land has been sublet to an under-raiyat. But the learned vakil for the respondent has suggested that where, as here, on the face of the lease of the raiyat the rates at which the different classes of land were assessed can be determined, the under-raiyat is not bound to pay more than 25 per cent. of the rent assessed with respect to the parcels in his possession. This argument, in our opinion, is based on a fallacy. It cannot by affirmed that the raiyat pays so much rent for any particular parcel. No doubt, for the purposes of the assessment of the aggregate rent, certain rates were taken as the basis of the calculation by the superior landlord. Nevertheless, the raiyat holds the entire land of the holding for the aggregate amount. If he fails to pay any portion of this rent, the entire holding is liable to be sold, and he can not clearly save any particular parcel out of the

holding by payment of the rent assessed upon the land comprised therein. In our opinion, section 48 applies to cases in which the land held by the raiyat is co-extensive with the land held by the under-raiyat. The section was never intended to apply to cases of the class now before us.

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We may add, that in the course of the argument at the bar, reference was made to the decision of Mr. Justice Geidt in the case of *Akhil Chandra Biswas* v. *Amyad Ali* (1), where a question similar in scope to the one before us, appears to have been raised but not decided; that judgment, so far as it goes, supports the view we take.

The result therefore is that this appeal is allowed, the decree of the Court below set aside and that of the Court of first instance restored with costs in this Court.

S. K. B. *Appeal allowed.*

(1) (1904) S. A. No. 415 of 1903 (unreported).

CIVIL RULE.

Before Mr. Justice Coxe and Mr. Justice Imam.

RASIK LAL MANDAL

v.

SINGHESWAR RAI.*

1912

March, 8.

Hindu Law—Surety—Father's liability as surety—Whether son is liable to pay debt incurred by father as surety.

Under the Hindu Law, a son is liable for a debt incurred by his father as a surety.

Tukarambhat v. *Gangaram Mulchand Gujar* (1) and *Maharaja of Benares* v. *Ramkumar Misir* (2) referred to.

* Civil Rule, No. 368 of 1912, against the order of Ram Lal Das, Subordinate Judge of Purnea, dated Dec. 22, 1911.

(1) (1898) I. L. R. 23 Bom. 454. (2) (1904) I. L. R. 26 All. 611.