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**(1896) 09 CAL CK 0008**  
**In the Calcutta High Court**

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| Dijendra Nath Roy Chowdhry and Another | APPELLANT  |
| Vs                                     |            |
| Soylendra Nath Roy Chowdhry and Others | RESPONDENT |

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**Date of Decision :** 07-09-1896

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 158  
Civil Procedure Code, 1908 (CPC) — Section 45

**Citation :** (1897) ILR (Cal) 197

**Hon'ble Judges :** W. Comer Petheram, C.J; Rampini, J; Banerjee, J

**Bench :** Full Bench

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## Judgement

Petheram, C.J.—(after stating the facts, continued).---The zemindars have u(sic)bealed, and as I have the misfortune to differ from Mr. Justice Rampini as to the meaning of Section 158, I proceed to state my own view of it, so far as it affects the present question.

2. The question is whether u/s 158 the owner of a zemindari can include all the land held by the same tenant within his zemindari, though it is held under more than one tenure, or whether he must make a separate application in respect of the land held under each tenure. The question is entirely one of the construction of the Section, and no question of discretion or convenience or inconvenience can, in my opinion, be properly considered in answering it.

3. The Court to which the application is to be made would, undoubtedly, have jurisdiction to determine a suit for the possession of the land between the zemindar and the tenant, and to determine in one suit questions relating to lands which might be held under more than one tenure; and, as the same word " land " is used in the Section with reference to a suit and an application. I can only come to the conclusion that the framers of the Section meant the same land in each case. Had they intended that the word when used with reference to an application should not mean land, but something else, I cannot think that they would not have said so.

4. The only word in the Section upon which an argument for the respondent can

be founded is the word " class " in Sub-Section (c), as it may, no doubt, be argued that if the Legislature had intended that the lands of several tenures might be dealt with in one application, they would have used the plural instead of the singular, as, if several tenures were dealt with, the same person might be found to fall into several classes of tenants. A little consideration will, however, show that this argument is not well founded, as it is equally possible that the tenant may belong to the same class in respect of all the tenures, and then the word in the Sub-Section be sufficient to meet the case; and it would follow that if this is to be treated as the test word, a zemindar might include the land of several tenures in the same application when the tenant fell in the same class in respect of all of them, but could not do so when he would fall into different classes: a result which would be very unfortunate, as it would make the jurisdiction of the Court dependent on the decision of the case.

5. In my opinion there is nothing in the context to show any different intention, and the ordinary rule applies that the singular word " class " in the Sub-Section includes the plural " classes." I think the order of the Subordinate Judge is wrong, and that the case should be remanded to him to re-instate it on his file and dispose of it according to law; but as Mr. Justice Rampini is of a different opinion, the papers must be laid before a third Judge.

Rampini, J.—This is a proceeding instituted u/s 158 of the Bengal Tenancy Act in the Court of the Subordinate Judge of the 24-Pergana or The plaintiffs, who are landlords, applied to have determined the inclosed two tenancies, now in the occupation of the three defendants. One tenancy is described as a jamma, standing in the name of Chiranjib Khan, bearing a rental of Rs. 169-13-6, and the other as a jamma, standing under the name of Goluck Chunder Bose, bearing a rental of Rs. 69-11-15. The plaintiff applied to have determined the areas, positions and boundaries of the plots of land appertaining to these jammās, and the classes of tenants which the defendants belonged; also whether the rents of the tenancies were liable to enhancement or not. They valued their application as at a total value of Rs. 5,100, the value of one of the tenancies being, according to them, Rs. 3,731, and that of the other Rs. 1,369.

2. The defendants inter alia pleaded that the values of the tenancies were Rs. 1,000 and Rs.300, respectively; that a separate proceeding should have been instituted with regard to each tenancy; and that, accordingly, the proceedings should have been instituted in the Court of the Munsif of Basirhat.

3. The Subordinate Judge held that a separate application should have been presented with regard to each tenancy: he gave the plaintiffs an opportunity of electing with respect to which tenancy their present application should be regarded as applying, and, as they made no election within the time allowed them for the purpose, he dismissed the application.

4. An appeal has been preferred against this order, and it has been contended

(1) that there is nothing in Section 158 to prevent one application being presented for the determination of the incidents of any number of tenancies, provided they are in the occupation of the same person, or, as in this case, in that of the same set of persons; and (2) that, under the provisions of Sections 45 and 647 of the Civil Procedure Code, the Subordinate Judge was bound to determine the incidents of the two tenancies in one application, and that, if he found it inconvenient to do so, all he could do was to order separate trials with regard to each tenancy.

5. I am of opinion that the order of the Subordinate Judge is right, and that the Legislature, in framing Section 158 of the Tenancy Act, did not contemplate that in one proceeding under this Section the incidents of more than one tenancy should be determined. This appears to me to have been held by the learned Judges who decided the case of *Golap Chand Nowlakha v. Ashutosh Chatterjee* ILR 21 Cal. 602. They said in their judgment in that case: "In this case Ashutosh Chatterjee applied to the Court u/s 158 of the Rent Act to have the nature of a large number of tenancies determined in one suit. In other words, he asked the Civil Court to do what the law declares in Section 103 to be the peculiar duty of the Revenue authorities. The Subordinate Judge was of opinion that Section 158 only applied to particular cases, and did not justify such an application. The District Judge, however, was of opinion that the Section should be literally construed, and that the proceeding should be allowed. We think the Legislature did not contemplate that the several causes of action should be lumped up together. There is no procedure known to our law that recognizes the right to bring batches of suits in one claim. We direct that the decree of the lower Court be set aside, and that of the first Court affirmed with costs."

6. Now, the plaintiff's in this case appear to me to be doing exactly what the learned Judges in the above cited judgment held could not, and should not, be done. They are bringing one application with regard to more than one tenancy. They are lumping up different causes of action. They are instituting two suits, or rather two proceedings by one and the same application. They are trying to make the settlement procedure applicable to proceedings of the Civil Court u/s 158.

7. No doubt a distinction can be drawn between the present case and the case of *Golap Chand Nowlakha v. Ashutosh Chatterjee* ILR 21 Cal. 602 inasmuch as in this case, one set of defendants hold both tenancies, while in the case of *Golap Chand Nowlakha v. Ashutosh Chatterjee* ILR 21 Cal. 602 there were about twenty tenants in occupation of the different tenancies. The learned Judges, who decided that case, however, did not base their judgment on that fact. They based it on the ground that the Legislature in Section 158 contemplated that one tenancy only should be dealt with in one proceeding under that Section, whatever might be the literal interpretation of its terms, and I am of the same opinion. I may add that the word " class " in Clause (c) of the Section clearly points to this conclusion. The " class" to which the tenant belongs is to be

determined. The Legislature did not contemplate that the "classes" to which he belonged should be determined, as might be necessary if more than one tenancy could be the subject of one application u/s 158, for one tenant could, undoubtedly, belong to more than one class of tenants, if he were in occupation of more than one tenancy.

8. Then, I am of opinion that Sections 45 and 647 of the CPC are not applicable to proceedings u/s 158. Section 143, Clause (2) of the Tenancy Act makes the CPC applicable to all suits; but not to "miscellaneous proceedings" initiated by an application. From Section 144, Clauses (1) and (2), it is clear that the Tenancy Act makes a distinction between "suits" and "proceedings" initiated by application. The order on an application u/s 158 has, by Clause (3) of that Section, the force of, and is subject to, the like appeal as a decree; but this does not make it a suit, [see the case of Upadhya Thakur v. Persidh Singh ILR 23 Cal. 723 in which it has been ruled that proceedings in a case u/s 104 (2) of the Tenancy Act, which are initiated by an application, are not a suit; though the final order on them may have the force of a decree and be subject to appeal. That being so, the Subordinate Judge was not bound to apply the provisions of Sections 45 and 647 of the CPC to the proceedings in this case, and he had a discretion to pass such order as he thought fit to pass in the circumstances. I consider the order he did pass was a very proper one. He required the plaintiff's to elect to which tenancy their application should be regarded as applying, leaving them free to present another application for a determination of the incidents of the other tenancy. As the plaintiffs advisedly refused to make an election, he rejected the application.

9. This order seems to me to be right, both because, as already pointed out, the plaintiff's application was not one such as the Legislature, in framing Section 158, contemplated should be presented under it, and as a perfectly proper one under the circumstances. It would be manifestly exceedingly inconvenient to a Court to have to determine the incidents of more than one tenancy in one proceeding. The lands of each tenancy may consist of different plots. They may be situated in different villages. Each plot may be held at a different rent and at a different rate of rent. The situation, quantity and boundaries of each plot in each village and the rent, and rate of rent, at which each was held, would have to be ascertained and described. Then, if one application is good for more than one tenancy, why should it not be good for twenty? as in the case of Golap Chand Nowlakha v. Ashutosh Chatterjee ILR 21 Cal. 602 or for even more. It would in that case be a most complicated matter to determine the names of all the tenants (for there might be joint tenants, as in this case), and the different classes to which they belong in respect of each tenancy. The decree in such a proceeding would be a most portentous document, full of most numerous and complicated details, having no connection with each other. It is, therefore, in my opinion, most desirable for the sake of clearness, simplicity, order and method, that each application u/s 158 should have relation to only one tenancy and no more.

10. It has been said that all confusion could be avoided by the Judge ordering separate trials with regard to each tenancy, though a joint application may have been presented for the determination of the incidents of all of them. But this would be an inconvenient course to pursue. The record of one trial only would be complete. In the course of the other trials reference would constantly have to be made to the application in the first trial, or else a copy would have to be put up with the record of each trial. But the simplest way of all would be to require, as the Subordinate Judge has done, that an application should be presented in each case, and that, as I have observed, would seem to me to be what the Legislature contemplated.

11. I would, therefore, dismiss this appeal with costs.

12. In consequence of the difference of opinion between their Lordships, the case was, u/s 575 of the Civil Procedure Code, referred to Mr. Justice Banerjee for his decision. The parties were represented at this hearing by the same pleaders as at the hearing before the Division Court. The arguments appear sufficiently from the judgment delivered by

Banerjee, J.—In this appeal, which arises out of an application u/s 158 of the Bengal Tenancy Act, and which has been referred to me u/s 575 of the Code of Civil Procedure, owing to a difference of opinion between the Chief Justice and Mr. Justice Rampini, who first heard the appeal, the sole question for determination is whether, u/s 158 of the Bengal Tenancy Act, the landlord is authorized to include in one application two or more tenancies held by the same tenant, or whether he is bound to make a separate application in respect of each separate tenancy

2. The Court below has held that he is bound to make a separate application in respect of each tenancy, and it has, accordingly, dismissed the application of the appellants who had made an application in respect of two tenancies held under them by the respondents.

3. It is contended, on behalf of the appellants, that Section 158 contains no provision, either express or implied, against the making of an application like the one in this case; and that, in the absence of any such provision, their application ought to have been entertained, and any practical difficulty in the determination of the incidents of the two tenancies in question in one proceeding might have been obviated by following the course provided for in Section 45 of the Code of Civil Procedure, which applies to proceedings u/s 158. On the other hand, it has been argued for the respondents that Section 158 only contemplates an application in respect of a single tenancy; that the CPC has no application to proceedings under that Section; and that it was competent to the Court below to disallow an application of this sort, as it has done, on the ground of practical inconvenience.

4. After giving the matter my best consideration, the conclusion I arrive at is that the contention on behalf of the appellants is well founded.

5. It is true that Section 158 of the Bengal Tenancy Act, in speaking of " the landlord," " the tenant," "the land," " the class " to which the tenant belongs, and " the rent payable " by him, uses words in the singular number only; but by Section 2, Clause (2) of the General Clauses Act I of 1868, words in the singular include the plural, unless there is something repugnant in the subject or context. Some of these terms, such as " the landlord," " the tenant" and "the land " must obviously, in many cases, have to be taken as including the plural; for there may, very often, be more landlords than one forming a body of joint landlords, more tenants than one forming a body of joint tenants, and more plots of land than one of various descriptions in respect of one and the same tenancy; nor is the class to which the tenant belongs, the particular mentioned in Clause (c) of the Section, always one and the same in respect of one and the same tenancy, as it is not unusual to have a tenancy created by one and the same document in respect of alluvial or jungle lands, with a fixed rate of rent for one part of the land, and a progressively varying rate for another. Thus some of the words used in this Section in the singular number have often to be taken also in the plural. Is there anything repugnant in the subject or context, then, to say that the land of the tenant, the class to which he belongs, and the rent payable by him, may relate to more tenancies than one, all held by the same tenant or tenants under the same landlord? I do not think there is any. If the tenants are different in respect of different tenancies, then, no doubt, the case would not come within the scope of the Section, it being a case already provided for by chapter X, Section 103 and the following Sections; and this is what has been decided in the case of *Golap Chand Nowlakha v. Ashutosh Chatterjee* I. L. R. 21 Cal. 602.

6. That case, however, is no authority for the contention that a single application by the landlord or joint landlords in respect of two or more tenancies held under him or them by the same tenant or tenants cannot be entertained u/s 158. Special stress was laid in the argument on behalf of the respondents upon the language of Clause (c) of the Section which uses the term " class " to which the tenant belongs in the singular number, as indicating that it is only an application in regard to a single tenancy that the Section contemplates; but, as I have shown above, no such inference can arise, seeing that even in regard to a tenancy, created by one and the same document, the tenant may belong to one class in respect of a portion of the land demised, and to a different class in respect of another part, being a raiyat holding at fixed rates as to a part, and merely an occupancy raiyat as to the rest. It was argued that, if one application in regard to two or more tenancies, though held by the same tenant, was entertained, the proceedings would become complicated, and that the course suggested in the argument on behalf of the appellants, namely, that Section 45 of the CPC might be followed, would be inapplicable, because the CPC did not apply to proceedings u/s 158; and in support of this contention, Sub-Section 2 of Section 143 of the Bengal Tenancy Act was referred to as showing that the Code of Civil Procedure, subject to certain qualifications, applied only to suits, whereas proceedings u/s 158 were not suits.

7. I am of opinion that this argument is not sound. Section 647 of the CPC makes the procedure prescribed in the Code applicable, as far as it can be, to all proceedings in any Court of civil jurisdiction, other than suits and appeals. It is true that that Section is subject to the provision of Section 4 of the Code which provides that, " save as provided in the second paragraph of Section 3," nothing contained in the Code shall affect any law " prescribing a special procedure for suits between landholders and their tenants." But if a proceeding u/s 158 of the Tenancy Act is a suit, the CPC applies to it by virtue of Section 143, Clause (2) of the Tenancy Act. If it is not a suit the saving Clause in Section 4 of the CPC does not apply to it; and, therefore, Section 647 of the Code applies. In any view, then, the provisions of the CPC may be applied to the proceedings in question, so far as they can be made applicable, and the inconvenience resulting from the proceedings becoming complicated by the inclusion of more tenancies than one in an application u/s 158, may be obviated by following the course prescribed by Section 45 of the Code of Civil Procedure.

8. I should notice here a contention raised, on behalf of the respondents, that Section 647 of the CPC is limited in its application to incidental proceedings arising out of suits and execution of decrees, such as proceedings for setting aside sales and the like. This contention is sufficiently met by the case of *Thakur Pershad v. Fakirullah* ILR 17 All. 106 : L. R. 22 I. A. 44 in which their Lordships of the Privy Council make this observation: " Their Lordships think that the proceedings spoken of in Section 647 include original matters in the nature of suits, such as proceedings in probates, guardianships, and so forth, and do not include executions."

9. For the foregoing reasons I agree in the view taken by the learned Chief Justice in this case, and I think that this appeal ought to be allowed with costs, the order of the Court below set aside, and the case sent back in order that it may be heard and determined on the merits.