

(1916) 04 CAL CK 0004
In the Calcutta High Court

Gour Gopal Sinha and Another

APPELLANT

Vs

Gosta Behari Pramanick and Others

RESPONDENT

Date of Decision : 28-04-1916

Acts Referred:

Transfer of Property Act, 1882 — Section 37

Citation : 34 Ind. Cas. 409

Hon'ble Judges : Teunon, J; Chowdhuri, J

Bench : Division Bench

Judgement

1. In this case it appears that the plaintiffs and their co-sharer defendants (Nos. 8 to 14) are the owners of a 12-anna odd share in a certain revenue-paying estate. The revenue payable on their share is Rs. 462 (sicca).
2. In the year 1242 their predecessors-in-interest created a putni taluk in respect of their share in certain mauzas in favour of the predecessor of the Praraanick defendants. By the document creating the putni it was arranged that the putnidars should year by year pay into the Collectorate the sum of Rs. 412, to be credited to the Government revenue payable in respect of their landlords' share in the zemindari.
3. In the year 1909, the plaintiffs who are the owners of a 5-anna 6 1/2 ganda share found it expedient to open a separate account in respect of their share u/s 19 of Act XI of 1859 and did so with effect from the September kist of that year.
4. The putnidars have, however, continued to make their periodical payments in one sum, and to the credit of the general account of the estate. The result has been that the payments have been credited to the residuary share and that the plaintiffs' share has fallen into arrears and has been advertised for sale to the loss and inconvenience of the plaintiffs.
5. What the plaintiffs seek in their suit then is to have the yearly sum payable by the putnidars apportioned between the plaintiffs and their co sharers defendants and to obtain an order directing the putnidar defendants to make a separate

payment to the account and credit of the plaintiffs of the amount due in respect of their share.

6. The putnidar respondents contend that the sum that they have to pay is not rent and that in any case the contract contained in their document of title is one and indivisible.

7. In support of their contention that the yearly sum payable is not rent, they rely on the case decided by their Lordships of the Privy Council and reported as *Jotindra Mohun Tagore v. Jarao Kumari* 33 C. 140 : 3 C.L.J. 7 : 10 C.W.N. 201 : 1 M.L. 8 In that case no doubt on a construction of the document there in question, it was held that the sum payable by the putnidars into the Collectorate against the Government revenue payable by their landlords was not rent so as to be recoverable in the manner provided in the Putni Regulation VIII of 1819. But the present case, it appears to us, may be distinguished. The yearly sum here payable is payable in consideration of the putnidars' use and occupation of the land and though payable into the hands of the Collector, is agreed to be paid on account and to the credit of the landlords. It is, therefore, rent paid to the landlord, and we can find nothing in the document which takes away its essential character.

8. The next question then is, whether there is anything in the circumstances of the present case which should prevent the apportionment of this rent between the two sets of landlords. The apprehension of the putnidar respondents that the apportionment will in some way impair the value or affect the character of their permanent lease is necessarily groundless and the objection that at each of the four kists they will have to write two challans instead of one is frivolous. The plaintiffs landlords have in fact found it necessary to collect their share of the rent separately, and in this suit they have made all their co-sharers parties. That in such circumstances they are entitled to have the rent apportioned would appear to follow from the principle underlying Section 37 of the Transfer of Property Act, and also from the authority of the cases reported as *Sreenath Chunder Chowdhry v. Mohesh Chunder Bundo padhya* 1 C.L.R. 453 and *Ishwar Chunder Putt v. Ram Krishna Dass* 5 C. 902 : 6 C.L.R. 421 : 3 Shome L.R. 132 and *Rajnarain Mitter v. Ekadasi Bag* 27 C. 479 : 4 C.W.N. 494.

9. We, therefore, hold that the sum payable by the putnidar defendants is rent, and that the plaintiff appellants are entitled to have the same apportioned, and to have an order directing the putnidars to pay into the Collectorate the share due to the share of the plaintiffs to their separate credit and account.

10. We, therefore, set aside the decrees of the lower Courts and remand the case to the first Court in order that the remaining questions arising in the case may be heard and determined. The appellants will have their Costs in this Court and in the Court of first appeal.

11. The costs in the first Court will abide the result.