

(1913) 07 CAL CK 0005
In the Calcutta High Court

Case No : Appeals from Appellate Decrees Nos. 2100 and 2157 of 1910

Hari Mohan Majumder

APPELLANT

Vs

Sri Mohan Ghosh

RESPONDENT

Date of Decision : 17-07-1913

Acts Referred:

Citation : (1913) 07 CAL CK 0005

Final Decision : Dismissed

Judgement

Coxe, J.—A preliminary objection is taken in these cases that no appeal lies. I think, however, that sec. 187 is clear on this point and that the objection must fail. The appeals themselves however must, in my opinion, be dismissed on the ground that an application under sec. 158 to determine the incidents of a tenancy cannot be made against persons who have only a portion of the proprietary interest in the land of the tenancy. In this case the applicant obtained separate leases from different landlords of their respective undivided interests in the same land. They, of course, can collect their rent separately from him but it seems to me concluded by authority that there is only one tenancy. This follows from the decision of the Full Bench in Guni Mahomed v. Moran I. L. R. 4 Cal. 96 (1878). I may refer also to Gopal Chandra Das v. Umesh Narain Choudhry I. L. R. 17 Cal. 695 (1890) and Baidya Nath De Sarkar v. Ilim I. L. R. 25 Cal. 917 (1897) and Hari Charan Bose v. Runjit Singh I. L. R. 25 Cal. 917n (1896), and this view seems to me only common sense. How is it possible to take a lease of an undivided share in land for the purpose of cultivation ? And even when the bulk of the land is sublet to tenants there is usually some nij-jote in khas possession. How can anybody cultivate an undivided share of land ? And it is easy to see the difficulties that must necessarily arise in the case of a lease of an undivided share of land cultivated by sub-tenants when the boundaries of the land are uncertain and it is not known what land cultivated by subtenants near the boundaries is included in the lease and what is not.

2. The learned Judge relies on the case of Moheeb Ali v. Ameer Ali I. L. R. 17 Cal.

538 (1890), in which it was held that an application under sec. 158 cannot be made by a co-sharer landlord and he holds that the converse must apply. In this I think he is right. I can certainly see no reason why when a co sharer landlord is precluded from having the incidents of a tenancy determined against a tenant, the tenant should be allowed to have the incidents determined as against a co sharer landlord.

3. The tenant in this case had brought four separate applications against different co-sharers. These have been decided separately and probably they have been decided differently. What then is the result ? The tenancy, in my opinion, is one and the same and it cannot be doubted that the land is one and the same. It is surely impossible to hold that the Court can decide that the same land is of a certain area, and lies within specified boundaries as against one co-sharer and is of quite a different area and lies within different boundaries as against another. And as against a third co-sharer both decrees would be evidence and neither conclusive, so that the whole matter would have to be threshed out again. And if one co-sharer who had obtained a decree became also by purchase or inheritance the representative in interest of another co-sharer, who had obtained another decree, two contradictory decisions would be final and conclusive between him and the tenant. I would therefore dismiss the appeals.

4. A cross objection has been put in on the question of costs. The Subordinate Judge directed that all the costs should be paid by the landlord. The District Judge decreed the appeals and dismissed the suits, but added "I make no order as to costs either in appeal or in the lower Court."

5. I think it is impossible that the learned Judge meant by this that the decision of the first Court on the question of costs should stand, that the successful landlord should be saddled with almost all the costs of suits which in the opinion of the Judge were not maintainable at all. He probably intended that the parties should bear their own costs and did not advert to the question of the cost of the local investigation by a Commissioner. I would accordingly direct that the landlord pay half the cost of the enquiry and that otherwise the parties bear their own costs in all Courts. Ray, J.

I agree in holding that four different applications under sec. 158 of the Bengal Tenancy Act by the same person and in respect of the same land do not lie. The words "the landlord or the tenant of the land" occurring in this section clearly mean the landlord or the tenant of the whole land and not of a share of it. If there are several landlords or several tenants they must all join. The landlord means the whole body of landlords and the tenant means the whole body of tenants, if there are more than one. This is the ordinary meaning of the words. It is immaterial whether the rights of the landlords or the tenants are of the same kind or not. Thus if A is proprietor of a half share of a tract of land and B is putnidar of another half share, A and B must join in an application under this section. So if X holds a half share of the same land as a tenant in one right, Y holds the other half share in another right, X and Y must join in an application

under it. It is immaterial whether there is one or several tenancies over the land. There will arise no difficulty in following the provisions of the section and that is what the section contemplates. There is to be one proceeding under the section and all matters pointed out in the section are to be determined under it. In this case the tenant was bound to proceed by one application and as he has not done that his applications must fail and I would dismiss them.