

(1898) 04 CAL CK 0015
In the Calcutta High Court

Ishan Chandra Sinha Hikim and Others

APPELLANT

Vs

Nilmadhub Patra and Others

RESPONDENT

Date of Decision : 14-04-1898

Acts Referred:

Land Registration Act, 1876 — Section 78

Citation : (1898) ILR (Cal) 787

Hon'ble Judges : Rampini, J;O'Kinealy, J

Bench : Division Bench

Judgement

O'Kinealy and Rampini, JJ.—The plaintiffs in this suit sued for the rent of the years 1296 up to the 12 annas kist of 1299. The plaintiffs are 14 annas co-sharers. The defendants Nos. 1 to 5 are tenants of the land. They are also the owners of the remaining 2 annas of the landlord's interest. The matter is, however, immaterial, as the plaintiffs have been found to have been hitherto in separate collection of their 14 annas share of the rent. The plaintiffs are registered under Bengal Act VII of 1876 to the extent of 8 1/2 annas only. They are unregistered as to the remaining 5 1/2 annas. The lower Courts have given them a decree for 8 annas share of the rent claimed by them, except as respects the rent of 1296, which has been held to be barred by limitation. It is not clear why the plaintiffs have not got a decree for the remaining anna with regard to which they have been registered. But no question as to this arises in this appeal.

2. The defendants appeal and contend that the plaintiffs are not entitled to any rent at all, inasmuch as to give them a decree for 8 annas of the rent, it is said, is to apportion the rent to this extent, which they do not ask and are not entitled to ask should be done in this suit. We think there is no force in this contention. There cannot be held to be in this suit any apportionment of the rent, which has been found to be Rs. 74-10 per annum. The suit has been perfectly rightly framed for the whole of the rent due to the plaintiffs. All the co-sharers are parties to the suit. The plaintiffs' claim to the amount of rent not decreed to them has been dismissed. The defendants cannot be sued for it again, which is

greatly to their advantage. The next time the plaintiffs sue for their rent, they will have to sue again for the rent of their 14 annas share. There is nothing in the decree in this suit which will justify them in suing in future for the 8 annas share for which they have got a decree. The decree must be regarded as in favour of all the plaintiffs and not in favour of those only who have been registered. It is true that the Munsif in calculating the amount due to the plaintiffs has specified the plaintiffs whose names have been registered and the extent of the shares for which they have been registered. But he has done so for arithmetical purposes only, and not for the purpose of apportioning the rent among the plaintiffs.

3. To hold that the defendants are entitled to have the suit entirely dismissed because the plaintiffs have not registered their names for the whole of their 14 annas share would be to enable the former to evade the payment of their just debts on a most technical plea. If this be the law, it will always be possible for a tenant to escape payment of the whole of his rent by showing that some fractional share of his landlord's interest is unregistered.

4. But it does not seem that Act VII of 1876 ever intended that such should be the case. On the contrary, the 2nd para of Section 78 of Bengal Act VII of 1876 appears expressly to provide that a proprietor is entitled to recover his rent for the share for which he is registered, while being refused his rent only for the share for which he is unregistered. The 2nd para of Section 78 runs thus: "No person being liable to pay rent to two or more such proprietors, managers or mortgagees, holding in common tenancy shall be bound to pay to any one such proprietor, manager or mortgagee more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, manager or mortgagee is registered bears to the entire estate or revenue free property." The penalty of non-registration is therefore the forfeiture, not of the whole rent, but of the rent of the share in regard to which the landlord is unregistered. For these reasons, we affirm the decree of the Lower Appellate Court and dismiss the appeal with costs.