

(1896) 03 CAL CK 0003
In the Calcutta High Court

Juggut Chunder Chowdhry

APPELLANT

Vs

Golack Chunder Ghose and Others

RESPONDENT

Date of Decision : 24-03-1896

Acts Referred:

Bengal Tenancy Act, 1885 — Section 93, 95

Citation : (1896) ILR (Cal) 522

Hon'ble Judges : Macpherson, J; Hill, J

Bench : Division Bench

Judgement

Macpherson and Hill, JJ.—It is argued that the appointment of the manager having been made by the consent of parties and without the observance of the procedure prescribed in Sections 93 and 95 of the Bengal Tenancy Act, the appointment was not really made by the District Judge u/s 95, but derived its validity solely from the consent of the parties, and continued only so long as the state of things under which the consent was given existed; consequently, that the petitioner was not bound by the order appointing the manager; and that the order of the Judge, which in effect, continued the management and authorized the manager to collect the rent realisable by the petitioner in respect of this putni interest, was wrong and. without jurisdiction.

2. We see no force in these contentions. It is clear that there was a proper application to the District Judge u/s 93 by some of the co-owners for the appointment of a common manager, and that notice was served on all the co-owners to show cause why a common manager should not be appointed. In the result no cause was shown, but the District Judge, instead of making an order u/s 94, directing the owners to appoint a common manager, gave them time in order that they might come to some arrangement.

3. Eventually, they agreed to the appointment of Golaok Chunder Ghose, and the Judge made a formal order u/s 95 appointing him as manager. It appears that at that time the share of Bhabani Nath Rai, one of the co-owners, was let out in izara to some of the other owners. Bhabani Nath Rai at first objected to the

appointment of a manager, but afterwards withdrew the objection, and said he would agree to the appointment of a common manager as regards the property, which was in his khas possession as proprietor, but that he was not in any way concerned with the appointment of the manager as regards the property which was let out in izara, this not being in his khas possession. The manager was appointed in March 1892, and assumed the management of the entire properties, collecting all the rent due to the co-owners, either in their proprietary or izaradari right. After the izara given by Bhabani Nath Rai had come to an end some time in 1894, he gave a putni lease of his 3 annas share to the petitioner, who then began to collect or to attempt to collect the rent due to him as putnidar. This led to a representation by the manager; and the District Judge, after hearing the objections of the petitioner, ruled that he could not be allowed personally to collect his 3 annas share of the rent as putnidar, and that there was no ground for disturbing the common management of the manager, which had been going on since 1892. The petitioner then obtained a rule to show cause why this order should not be set aside on the grounds already stated.

4. It would, no doubt, have been better if the Judge had, u/s 94, made an order directing the parties to appoint a common manager; but his omission to do that does not, we think, in any way invalidate the order or diminish the scope of it. The manager was not a manager appointed by the parties, but by the District Judge; although, no doubt, the parties agreed to the appointment of the particular person selected; and in pursuance of that order the manager assumed and has retained up to the present time the management of the properties. It could not, we think, be contended with any success that Bhabani Nath Rai could, so long as that order was in force, himself collect the rent payable on account of this 3 annas share; and, if he could not do that, the person who has derived title from him as putnidar is not in any better position. He took a putni, as the Judge remarks, knowing that the property was under the charge of a common manager appointed by an order of the Court, an order which under Clause (3) of Section 98 would have the effect of preventing any of the co-owners from themselves realising the rents due to their respective shares. If we were to hold that a person taking a lease of the share of one of the co-owners after the appointment of a common manager could realise his own share of the rent, we should hold in effect that it would be open to any co-owner to defeat at his pleasure the sole object for which a manager is appointed. This case, we think, is quite distinguishable from the case of *Ganoda Kanta Roy v. Prohabati Dasi* ILR 20 Cal. 881, which was cited as an authority for the petitioner's contention. In that case the parties, while objecting to the appointment of a common manager, agreed that the property should be made over to the Court of Wards. Under an order of the Judge it was made over to the Court of Wards, which assumed the management and continued it for sometime, but afterwards gave it up. The Judge then, without taking any further proceedings u/s 93, proceeded to appoint a common manager. This Court held that he had no authority to do that, as the consent under which the Court of Wards took charge was limited to the Court of

Wards, and direct to give he Judge power to appoint any other manager. Here the management (sic), by the Judge with the consent of the parties is still the manager. We see no reason to interfere with the order of the District Judge, and discharge this rule with costs.