

(1912) 08 CAL CK 0022
In the Calcutta High Court

Sati Prosad Garga and Another

APPELLANT

Vs

Radha Nath Maity and Another

RESPONDENT

Date of Decision : 30-08-1912

Acts Referred:

Bengal Tenancy Act, 1885 — Section 52

Citation : 18 Ind. Cas. 197

Hon'ble Judges : Beachcroft, J;Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. We are invited in this Rule to set aside a decree made by the Court of Appeal below, in affirmance of that of the Court of first instance, in a suit for what has been described as assessment of rent. The plaintiffs are members of a joint Mitakshara family and commenced this action on the 12th September 1910, for assessment of rent u/s 52 of the Bengal Tenancy Act in respect of a holding in the occupation of the defendants. The case for the plaintiffs is that the defendants hold a tenancy of 29 bighas, 12 cottahs at an annual rent of Rs. 25, that upon measurement, it has been discovered that the area in the occupation of the defendants is 44 bighas, 17 cottahs and 4 chittaks and that, consequently, the defendants are liable to pay fair rent in respect of the excess land. The plaintiffs, therefore, pray that rent may be assessed at Rs. 46-7-3 for 15 bighas, 5 cottahs, 4 chittaks of excess land and that the aggregate rent of the land in the occupation of the defendants may be settled at Rs. 71-7-3 gundas. The plaintiffs further pray that a decree may be made for arrears of rent at the rate so determined. The defendants resist the claim on the merits and also plead that the suit has not been properly constituted, inasmuch as the son of one of the plaintiffs, who is interested in the superior interest as a member of the joint Mitakshara family, has not been joined as a co-plaintiff. Upon these pleadings, the Court framed an issue in these terms: "Is the suit bad for defect of parties?" The objection taken by the defendants on this head was deemed fatal by the primary Court, and the suit was accordingly dismissed. Upon appeal, the Subordinate Judge has affirmed that decision. Two questions, therefore, require

consideration, namely, first, whether Section 188 of the Bengal Tenancy Act is applicable to a case where assessment of rent is sought u/s 52 of the Bengal Tenancy Act; and, secondly, whether the plaintiffs, as members of a joint Mitakshara family, are entitled, notwithstanding the provisions of Section 188 of the Bengal Tenancy Act, to maintain the suit on the ground that they represent the other members, if any, of the family.

2. With regard to the first point, it has not been disputed that so far back as 1890, it was ruled by this Court, in the case of Gopal Chunder Das v. Umesh Narain Chowdhry 17 C. 695 that the provisions of Section 188 of the Bengal Tenancy Act are applicable to suits for alteration of rent on alteration of area u/s 52 of the Bengal Tenancy Act. That decision has never been successfully challenged and was followed in Khondahar Abdul Hamid v. Mohini Kant Saha Chaudhuri 4 C.W.N. 508. In the case last mentioned, a distinction was drawn between cases in which the plaintiff seeks assessment of rent on excess land as constituting a separate holding and cases in which the plaintiff seeks assessment of rent upon the entire holding inclusive of the excess land; it was held by Mr. Justice Banerjee, that in cases of the former description, Section 188 was not applicable. In a later case, Abdul Hakim Shaha v. Rajendra Narayan Rai 13 C.W.N. 635; 1 Ind. Cas. 312 it was, however, doubted whether this distinction was well-founded on principle. Anyhow, the rule recognised in Gopal Chunder Das v. Umesh Narain Chowdhry 17 AC. 695 has been uniformly followed in this Court for twenty-two years, and we are not prepared to dissent from that view at this distance of time. We may add that the learned Vakil for the petitioners contended with much force that the framers of the statute could never have intended that Section 188 of the Bengal Tenancy Act should be applied to suits, because it cannot be maintained that an agent authorised to act on behalf of the landlords is competent to institute a suit in his own name on their behalf. It is too late, however, to contend that Section 188 is not at all applicable to suits; because it was ruled by their Lordships of the Judicial Committee, in Jatindra Nath Chowdhry v. Prasanna Kumar Banerjee 38 AC. 270; 8 Ind. Cas. 842; 15 C.W.N. 74; 9 M.L.T. 1; 13 C.L.J. 61; 8 A.L.J. 1; 13 Bom. L.R. 1; 21 M.L.J. 92; (1911) 2 M.W.N. 119 that Section 188 applies to suits for enhancement of rent properly so called. We must take it, therefore, as indisputably settled that Section 188 is applicable to suits. The only question is, whether it is applicable to suits for assessment of rent u/s 52 of the Bengal Tenancy Act. No doubt, there is this fundamental distinction between suits for enhancement of rent u/s 30, and suits for assessment of rent u/s 52, that in the former case, the enhanced rent cannot be, while in the latter case the assessed rent may be, recovered for a period antecedent to the suit: Jagannath Manjhi v. Jamman Ali 29 AC. 247. But, still the institution of a suit like the present for assessment of rent u/s 52, may properly be deemed an act which the landlord is authorised to do under the Bengal Tenancy Act, within the meaning of Section 188, as laid down in Gopal Chunder Das v. Umesh Narain Chowdhry 17 AC. 695. The first ground, therefore, fails.

3. With regard to the second point, it has been contended that a member of a Mitakshara family may be allowed to institute a suit of this description on behalf of other members of the family as their representative, and reliance has been placed upon the decision of the Judicial Committee in the case of *Kishan Prasad v. Har Narain* 13 C.L.J. 345; 33 A.C 272; 15 C.W.N. 321; 9 Ind. Cas 739; 8 A.L.J. 256; 9 M.L.T. 343; 21 M.L.J. 378; 13 Bom. L.R. 359; 38 I.A. 45; (1911) 2 M.W.N. 395. Reference has also been made to the cases of *Hori Lal v. Nimman Kunwar* 9 A.L.J. 819; 31 A.C 549; 15 Ind. Cas. 126 and *Madan Lall v. Kishan Singh* 9 A.L.J. 841; 34 A.C 572; 15 Ind. Cas. 138 where a view contrary to that taken by this Court in *Suraj Prosad v. Gulab Chand* 28 AC. 517 as to the effect of Section 85 of the Transfer of Property Act, was adopted. Now, it need not be disputed, as pointed out by the Judicial Committee in the case of *Jogendro Deb v. Funindro Deb* 14 M.I.A. 367; 17 W.R. 104; 11 B.L.R. 244 that under certain circumstances, a suit instituted by the head of a Mitakshara family operates in its result in the same way as if the other members had been parties thereto. But the question must be decided in each individual case, whether the institution of the suit by one or some alone of the members of the family, is permissible in view of the statutory provisions, if any, applicable to the subject. Here, Section 188 of the Bengal Tenancy Act provides that where two or more persons are joint landlords, anything which the landlord is under the Act required or authorised to do, must be done either by both or all those persons acting together, or by an agent authorised to act on behalf of both or all of them. It is clear, therefore, that the Legislature has expressly provided for the performance of an act, not only by the entire body of the joint landlords, but also by their representative. But the Legislature contemplated that where such representative is allowed to act, he must be a single individual; in other words, the act must be done by a single agent authorised to act on behalf of the entire body of landlords. In the case before us, the suit has been instituted by two members of the joint family; it cannot, therefore, be contended that they had instituted this suit as agents authorised to act on behalf of all the landlords. It is, moreover, doubtful whether a member of a joint Mitakshara family, even if he happens to be the head of the family, can be said to be an agent authorised on behalf of other members of the family; the Legislature apparently contemplated acts done by a common manager appointed under the Bengal Tenancy Act. We are, consequently, of opinion that the suit has been improperly constituted and cannot be maintained. The second ground, therefore, fails.

4. The result is that the Rule is discharged with costs. We assess the hearing fee at three gold mohurs.