

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Roy Jatindra Nath Choudhri and another v. Prasanna Kumar Banerji and others, from the High Court of Judicature at Fort William in Bengal; delivered the 15th November 1910.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD MERSEY.

LORD ROBSON.

SIR ARTHUR WILSON.

Mr. AMEER ALI.

[DELIVERED BY LORD MACNAGHTEN.]

This litigation, which is the outcome of five different suits, has lasted for the period of fifteen years. It is not necessary to explain its origin or to trace its course which has certainly been leisurely and somewhat devious. Nothing now remains to be determined but a question of general importance :—

Does the Bengal Tenancy Act, 1885, prohibit one or some of two or more joint landlords from suing to enhance the rent unless both or all of the “ fractional landlords ” as they are sometimes called, join in the suit as co-plaintiffs ?

Section 188 declares that “ where two or “ more persons are joint landlords, anything “ which the landlord is under this Act required “ or authorised to do must be done . . . by “ both or all those persons acting together . . . ”

The question therefore divides itself into two branches: (1) Is the institution of a suit to enhance rent a thing which the landlord is under the Act authorised to do? And (2) What is the meaning of the words "acting together"?

To take that expression first, it seems to their Lordships that it means just what it says. In order to comply with the Act the persons referred to must take common action. It was argued that it is enough if one of the joint landlords sues as plaintiff and makes those who do not concur with him defendants. In plain words the proposition is that if a person is made a defendant because he is unwilling to act together with the plaintiff he is to be deemed to be acting together with the plaintiff when once he is placed on the record as defendant. It is enough to state the proposition to dispose of it.

Then comes the question, is a suit to enhance rent a thing authorised under the Act? It is so plainly in the case of an occupancy raiyat. The authority is given expressly in Section 30. It is so also in the case of tenure holders though the language is not so explicit. Section 7 (1) provides that in the cases where the rent of a tenure holder is liable to be enhanced it may (subject to any contract between the parties) be enhanced up to a certain specified limit. Now rent can only be enhanced by instituting a suit for that purpose; and therefore it seems tolerably clear that the institution of a suit for enhancement of rent is a thing authorised by the Act in the case of tenure holders as well as in the case of occupancy raiyats.

It was argued that a suit to enhance rent stands on the same footing as a suit for arrears of rent, and that inasmuch as a suit for arrears of rent may be brought by one joint landlord making the other joint landlords defendants (as was decided in the case of *Raja Pramada Nath*

Roy v. Raja Ramani Kanta Roy, 35 I. A. 73) a similar course may be adopted in a suit to enhance rent. But the answer is that the bringing of a suit for arrears of rent is not a thing which the landlord is under the Act either required or authorised to do. Rent in arrear is a debt. The right to recover a debt arises under the general law. A suit for recovery of rent does not require the authority of the Bengal Tenancy Act, nor does the Act purport to authorise such a suit, though on a decree being obtained consequences may follow which result from the provisions of the Act and from those provisions alone.

Their Lordships therefore think that the judgment of the High Court dismissing these suits was quite right, and they will humbly advise His Majesty accordingly.

The Appellants will pay the costs of the Appeal.

In the Privy Council.

ROY JATINDRA NATH CHOWDHRI
AND ANOTHER

v.

PRASANNA KUMAR BANERJI AND
OTHERS.

LONDON :

PRINTED BY EYRE AND SPOTTISWOOD, LTD.
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1910.