

(1880) 04 CAL CK 0004

Calcutta High Court

Case No: None

Lootfulhuck

APPELLANT

Vs

Gopee Chunder  
Mojoomdar

RESPONDENT

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Date of Decision: April 13, 1880

Citation: (1880) ILR (Cal) 941

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

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### Judgement

Morris, J.

The ground taken by the Judge is, that this "defendant as tenant is not bound to pay his rent fractionally a single hour longer than he chooses so to do." And he supports this proposition by quoting a passage in the judgment of Mr. Justice Ainslie sitting alone in the case of Anu Mundul v. Sheikh Kamalooddeen 1 C.L.R. 248. He also refers to some remarks of the Chief Justice in the Full Bench case of Guni Mahomed v. Moran (I.L.R. 4 Cal. 96). It appears to us, however, that the remarks in the Full Bench case of Guni Mahomed (I.L.R. 4 Cal. 96) cannot be understood as supporting the view taken by the Judge that a tenant-defendant can, at his option, decline to pay to a part-owner of property the fractional share of rent which he has previously been paying to him. It seems to us that, when on the consent of all the shareholders, landlords, a tenant in an undivided property has agreed to pay to the different sharers the rent of the tenure in proportion to their respective shares, and can be and has been sued for the rent of a particular share, it is not open to him, without the consent of owner of that share, to cease paying in accordance with his contract. It is only, as the Full Bench puts it, by the consent of all the parties by which the arrangement was originally created that it can at any time be put an end to.

2. There is, however, another ground on which the Judge allows the appeal of the defendant--namely, that given in para. 12,--that "plaintiff admits defendant has never yet paid at the rate claimed, but avers he ought to." But, as appears from

para. 7 of the same judgment, the claim, of the plaintiff to a 13-anna odd share of the rent is founded on a right in himself to a 9-anna odd share, and to the remaining 4-annas odd share in right of his mother under an assignment of it by her to him. In other words, he sets up the right of his mother to the rent of a 4-anna odd share, which right has now passed to him; and clearly if there has been a separate attornment on the part of the tenant in respect of this 4 annas odd share, he is entitled, upon the assignment, to claim that share, together with his own share as previously existing. As we understand the judgment of the Courts below, the first Court distinctly held that the share of the plaintiff was as claimed by him, 13 annas 1 ganda 6 cowries of 8 annas,--that is, 9 annas odd his own, and 4 annas odd in right of his mother's separate share. And the Judge on appeal does not find otherwise. He simply says, that the evidence as to the plaintiff's mother having made over her share to him is "miserably weak." We must, therefore, take it that the plaintiff on the one hand proved the right to his own share and the right of his mother to the share assigned by her to him, while the defendant on the other hand failed to prove the case set up by him that the property was held by the different co-sharers in shares different from those alleged by the plaintiff". The co-sharers not having appealed against the judgment of the first Court, must be understood to have acquiesced in the decision that the share of the plaintiff on this property is as he states, 13 annas odd. This being so, the question arises whether it is open to the defendant No. 22 in his position of tenant to dispute the right of the plaintiff to a 13-annas odd share of the rent, simply on the ground that he has never yet paid to him agreeably to that share. It must be observed that this defendant never resisted the claim of the plaintiff on the ground taken for him by the Judge, that he was at liberty to decline payment of a fractional share of the rent. His objection had reference solely to the extent of the plaintiff's share. This point had been found against him, and the right of the plaintiff to a 4-anna odd share over and above his original 9 annas odd share had been established to the satisfaction of all the co-sharers. It does not, therefore, as it seems to us, lie in the mouth of the tenant-defendant to dispute the right of the plaintiff to obtain rent on account of these two amalgamated shares. We are supported in this view by the decision passed on the 15th January 1880 in Special Appeal, No. 661 of 1879, in a case very similar to the pre sent one, viz., Gunganarain Sirkar v. Sreenath Banerjee (ante, p. 915). The learned Judges there held, that the only persons interested in raising the question of shares,--namely, the co-sharers,--having acquiesced in the plaintiff's statement, the tenant-defendant runs no risk of being called upon to pay again any part of the share adjudged to the plaintiff. We think that when the issue of the right of the plaintiff to the share claimed by him has been fairly raised and determined, and the co-sharers have acquiesced in that determination, the present defendant cannot be allowed to avoid his liability to pay the rent due upon such share, on the ground that he has never before recognized such to be the share of the plaintiff. In this view, we set aside the judgment of the lower Court, and restore and affirm that of the first Court, with costs of this Court and of the Court below.