

(1917) 07 CAL CK 0041**Calcutta High Court****Case No:** None

Satyesh Chandra Sarkar and
Others

APPELLANT**Vs**

Haji Jillar Rahman

RESPONDENT**Date of Decision:** July 31, 1917**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 61, 61(1)(c)

Citation: 45 Ind. Cas. 721**Hon'ble Judges:** Beachcroft, J; Asutosh Mookerjee, J**Bench:** Division Bench

Judgement

1. This is an appeal by the tenant defendants in a suit for apportionment of rent and for recovery of arrears at the rate settled by the decree. The Courts below have decreed the suit. On the present appeal, the tenants do not attack the decree for apportionment of rent, but they contend that the claim for arrears should have been dismissed, inasmuch as at the date of the institution of the suit, there were no arrears due. This contention is based on the fact that between the 15th May 1911 and the 19th August 1912, the tenants had made sixteen deposits in Court u/s 61 of the Bengal Tenancy Act. It is not disputed that if these deposits were validly made, no arrears were due at the date of the commencement of the suit. The question in controversy consequently reduces to this: Were the deposits made in accordance with Section 61?

2. This plaintiff and the fourth defendants were, at the date of the institution of this suit, joint landlords of the tenant defendants, and this is the assumption on which the apportionment of rent is claimed. Consequently, the tenants were not bound to pay rent to their landlords, unless they could obtain a joint receipt for such payments as they might make. But, upon the facts which have been brought to light in the course of this litigation, there can be no reasonable doubt that it was not possible for the tenants to obtain such joint receipts. The case is thus fully covered

by Section 61(1)(c) of the Bengal Tenancy Act, which provides that when the rent is payable to co-sharers jointly and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf, the tenant may present to the Court, having jurisdiction to entertain a suit for the rent of his tenure or holding, an application in writing for permission to deposit in the Court the full amount of the money then due. The District Judge would have taken this view, if he had not erroneously held that the landlords could, at their choice, collect the rent in separate shares and that if they gave due notice to the tenants, it became the duty of the defendants to comply with the demand. The District Judge has overlooked that his opinion of the relative rights and obligations of joint landlords and their tenants is contrary to the rule enunciated by a Full Bench of this Court in the case of *Iswar Chunder Dutt v. Ram Krishna Dass* 5 C. 902 : 6 C.L.R. 421 : 3 S L.R. 132 : 2 Ind. Dec. (N.S.) 1182. Sir Richard Garth, C.J., stated in that case that a sale of a share in a tenure, which has been let to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an apportionment of the rent; but that if the purchaser of the share desires to have such a severance or apportionment, he is entitled to enforce it by taking proper steps for that purpose. If he takes no such steps, then the tenant is justified in paying the entire rent, as before, to all the parties jointly entitled to it. But if the purchaser desires to effect a severance of the tenure and an apportionment of the rent, he must give the tenant due notice to that effect, and, then, if an amicable apportionment of the rent cannot be made by arrangement between all the parties concerned, the purchaser may bring a suit against the tenant for the purpose of having the rent apportioned, making all the other co-sharers parties to the suit, *Rajnarain Kitter v. Ekadasi Bag* 27 C. 479pc : 4 C.W.N. 494 : 14 Ind. Dec. (N.S.) 318. In the case before us, the plaintiff instituted the present suit for apportionment of rent on the 18th November 1912. Before the rent has been actually apportioned by the decree made herein, the plaintiff could not, as a matter of right, claim from the tenants what he estimated to be his proportionate share of the rent. The reverse of this position was, undoubtedly, the exact attitude taken by him prior to this litigation. In these circumstances, the tenants were competent to avail themselves of the provisions of Section 61(1)(c) of the Bengal Tenancy Act. We hold accordingly that the deposits were validly made, and that at the date of the institution of the suit the amount claimed as arrears was not due.

3. The result is that this appeal is allowed and the decree of the Court below modified. The decree, in so far as it allows the claim for arrears with costs and interest, will be set aside; but in so far as it apportions the rent will stand confirmed. Under the circumstances, each party will pay his own costs in all the Courts.