

(1910) 04 CAL CK 0037

Calcutta High Court

Case No: None

Basli Bibi and Others

APPELLANT

Vs

Hanif-ud-din Mandal and Others

RESPONDENT

Date of Decision: April 18, 1910**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 26

Citation: 6 Ind. Cas. 570**Hon'ble Judges:** Mookerjee, J; Carnduff, J**Bench:** Division Bench

Judgement

1. We are invited in this Rule to set aside an order" by which the Court below has refused to add the petitioners as defendants in a suit for rent. The case for the petitioners is that the original tenants of the holding were two persons of the name of Rajoomandal and Danesmandal, that after their death the plaintiffs landlords brought a suit for arrears of rent against some only of their representatives and got a decree and that they have now brought the present suit framed in the same manner against some only of the representatives of the original tenants, without any notice to the others. They therefore, applied to the Court below to be added as parties defendants on the allegation that they were co-sharers of the tenants defendants and were in possession of the holding in that character. It maybe mentioned here that this petition accorded with the defence of the original defendants, who had alleged in their written statements that they alone were not liable for the whole rent and that as the present petitioners were interested in the tenancy as representatives of Rajoo Mandal and Danes Mandal, they should be joined as defendants. The Court of first instance thereupon without any enquiry recorded the following order which we are invited to revise: Some new persons appear and pray to be added as defendants. This being a rent suit, no third person can be added as defendant. The petition is rejected." it is obvious that this order cannot be supported. If the allegations of the petitioners are true, they are not

stranger to the land. Their case is that they are quite as much interested in the tenancy as the persons made defendants by the plaintiffs landlords and that if a decree for rent is allowed to be passed behind their back and without any opportunity afforded to them to contest the claim of the plaintiffs, they are likely to be seriously prejudiced, as the plaintiffs have claimed rent at a rate higher than that payable in respect of the lands of the tenancy. In our opinion, the Court ought to have determined summarily whether the petitioners were, as alleged by them, representatives of the original tenants and were in joint possession of the holding in which they claimed an interest ; if he found that they were so interested, their application ought to have been granted. In view of the provision of Section 26 of the Bengal Tenancy Act, and, of the principle deducible from the cases of Peary Mohan Mookerjee v. Kumares Chander Sirkar 19 C.790 and Annoda Kumar v. Hari Das 27 C. 545 : 4 C.W.N. 608, it cannot be disputed that upon the death of the original tenants, the heirs are liable for rent, even though not in possession, until they surrender and the heirs, as a body, are entitled to claim recognition from the landlord. [See also Moazam Hussain Chowdhuri v. Bhouddin 5 C.W.N. 190]. The learned Vakil who appears to show cause has, however, contended that the petitioners need not have been joined as defendants because, first, the plaintiffs succeeded on a previous occasion in their attempt to obtain a decree for rent behind their back, which decree still stands unreversed, secondly, that the effect of the previous decree is the dispossession of the petitioners and till they are restored to possession by a decree of Court, they cannot legitimately claim to be joined as defendants, and, thirdly, that as the plaintiffs are co-sharer landlords, any decree for rent obtained by them will have the effect of a decree for money and is not likely to prejudice the interest of any person who has not been brought on the record as a party-defendant. In our opinion, these reasons are not sufficient, singly or collectively, to justify the order of the Court below. The mere circumstance that the plaintiff succeeded in a previous suit of which the petitioners had no knowledge till recently, is not sufficient to show that they are entitled to succeed on the present occasion. They are clearly entitled to take exception to the frame of the suit. We are further of opinion that the effect of the previous decree was not the dispossession of the petitioners. In fact it is difficult to appreciate how it can be suggested that the petitioners, who allege that they are in actual occupation of the lands of the tenancy, have been dispossessed in the eye of the law, simply because the landlords have chosen to obtain a decree for rent against some only of the representatives of the original tenants. As regards the third reason assigned, it is not necessary for us to discuss what would be the precise effect of a decree for rent in the suit as framed. It is sufficient to say that if the petitioners are really interested in the tenancy as they allege, and if their co-sharers alone have been brought on the record as defendants, the result" of the omission to join them as defendants would be disputes and suits between themselves, their landlords, and the purchasers at the execution sale. In order to avoid multiplicity of litigation, it is obviously desirable that the petitioners should be added as defendants if it is proved that they are interested in the tenancy as representatives

of the original tenants.

2. It has been finally suggested as a last resort that even if the order of refusal of the original Court to add the petitioners as defendants, be assumed to be erroneous, it is not competent to this Court to interfere in the exercise of its revisional jurisdiction. This contention is manifestly unsustainable in view of the decisions in *Promotho Nath v. Rakhal Das* 11. C.L.J. 420 : 6 Ind. Cas. 546 and *Dwarka Nath v. Kisori Lal* 11 C.L.J. 426 : 6 Ind. Cas. 549.

3. The result, therefore, is that this Rule is made absolute, and the order of the Court below dated the 9th December 1909 discharged. The case will be remitted to the lower Court so that the question of the alleged title of the petitioners may be investigated. If it is proved that they are co-sharers in the tenancy, they must be added as defendants. Costs of this Rule will abide the result. We assess the hearing fee at one gold mohur.