

(1890) 02 CAL CK 0006

Calcutta High Court

Case No: None

Mohceb Ali alias Dummur and
Another

APPELLANT

Vs

Ameer Rai and Others

RESPONDENT

Date of Decision: Feb. 4, 1890**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 158, 188

Citation: (1890) ILR (Cal) 539**Hon'ble Judges:** Ghose, J; Beverley, J**Bench:** Division Bench

Judgement

Ghose and Beverley, JJ.

This appeal arises out of an application made u/s 158 of the Bengal Tenancy Act by two out of four joint landlords, and the application has been rejected by both the lower Courts as being barred by Section 188 of the same Act. There is no question whatever that upon the allegations of the parties the landlords in this case are joint; they are undivided co-sharers apparently collecting the rents jointly. Now Section 188 of the Act runs as follows: "Where two or more persons are joint landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them." An application by a landlord u/s 158 is a thing which the landlord is authorized to do under the Bengal Tenancy Act and under that Act alone; there is no other law that authorizes him to make such an application to the Court. It follows that when there are two or more joint landlords, the application must be made by all of them acting together.

2. In the present case two of the four co-sharers, it is alleged, refused to act with the others in making the application, and the applicants have endeavoured to meet the requirements of Section 188 by making them parties to the proceeding. But this, we think, is not a sufficient compliance with the provisions of the section; the four

co-sharers are not acting together in making the application. Unless they all unite in making the application, we think it is not a legal application u/s 158 which the Court is competent to act upon. No doubt under the law as it existed prior to the passing of the Tenancy Act, and as it was expounded by the decisions of this Court, one of several co-sharers could, under certain circumstances, sue to enhance the rent-Chuni, Singh v. Hera Mahto ILR Cal 633 Kali Chandra Singh v. Rajkishore Bhuddro ILR Cal 615 Rash Behari Mukerji v. Sakhi. Sundari Dasi ILR Cal. 644-or could apply for a measurement of the lands-Abdool Hossein v. Lall Chand Mohtan ILR Cal 36. But it is extremely doubtful whether after the passing of the Bengal Tenancy Act" and in view of Section 188 of that Act, these things may now be done by a joint co-sharer. But whether this is so or not, it seems to us that no argument can be drawn from it that under the present law an application for the determination of the incidents of a tenure may be made by a joint shareholder. Section 188 is an entirely new provision in the law of landlord and tenant in Bengal, and we cannot suppose that it was introduced without a deliberate intention on the part of the Legislature. An argument was also sought to be drawn from the fact that a suit may be brought, notwithstanding the provisions of Section 188, by a co-sharer for his share of the rent of an undivided tenure. But this stands, as has been explained in the cases of Prem Chand Nuskur v. Mokshoda Debt ILR Cal 201 and Jugobundhu Pattuck v. Jadu Ghose. Alhinhi ILR Cal 47, upon a wholly different ground. It has been argued before us that, in the view we take of the law, great injustice may be done in certain cases; as, for instance, if an auction-purchaser of an undivided share in an estate, who is unable to obtain information regarding the property either from the tenants or from his co-sharers, is debarred from applying for a determination of the particulars of the property u/s 158. It is pointed out that such cases may occur even where no dispute exists as to the management of the property such as would enable a co-sharer to apply for the appointment of a common manager u/s 93 of the Act. This may be so, but the language of Section 188 seems to us to be clear and explicit, and we do not feel ourselves at liberty to overlook its provisions or to strain it in any way.

3. The appeal must be dismissed with costs.