

(1880) 06 CAL CK 0019

Calcutta High Court

Case No: None

Ishwar Chunder Dutt
and Others

APPELLANT

Vs

Ram Krishna Dass

RESPONDENT

Date of Decision: June 1, 1880

Citation: (1880) ILR (Cal) 902

Hon'ble Judges: Richard Garth, J; Pontifex, J; Morris, J; Mitter, J; Jackson, J

Bench: Full Bench

Judgement

Richard Garth, C.J.

It appears to us that, having regard to the weight of authority in this Court, as well as to the question of principle and convenience, the proper solution of the points referred to us is as follows:

2. 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.

3. 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.

4. No real injustice will be done to the tenant under such circumstances, because the possibility of the severance of the tenure by butwara, sale, or otherwise, is only one of those necessary incidents of the property which every tenant is, or must be

presumed to have been, aware of when he took his lease; and as regards the costs of any suit which may be brought for the purpose of having the rent apportioned, they would of course be a matter for the discretion of the Court, and would probably depend upon how far in each case the tenant has had a fair opportunity of amicably adjusting the apportionment.

5. An instance of a suit of this nature will be found in the case of *Sreenath Chunder Chowdhry v. Mohesh Chunder Bundopadhyaya* (1 C.L.R. 453), decided by Jackson and Cunningham, JJ., where seven mouzas had been let in patni to certain tenants by the zamindar, and then, under a decree against the zamindar, three of those mouzas were sold to A, and the other four to B. A then brought a suit against the patnidars to have his share of the patni rent apportioned, making B, purchaser of the other mouzas, a party to the suit; and it was held that the suit was properly brought.

6. It appears to us that this case was rightly decided; and that it is impossible upon principle to distinguish cases where a tenure is sold privately from those where it is sold by public auction; or, on the other hand, to distinguish cases where a tenure is severed by different portions of its area being sold to different persons, from those where it is sold to different persons in undivided shares.

7. In all cases of this kind, the entirety of the joint interest should be considered as severable at the option of the purchaser; and it would lead to most inconvenient results, and to the depreciation of property thus sold in different lots, if the purchasers of such lots were compelled to collect their rents in one entire sum, conjointly with one another, or with the owners of the unsold shares or portions.

8. In this particular case, as the plaintiffs did not take any proper steps to make arrangements with the tenant, or to obtain an apportionment of the rent, the learned Judge of this Court was right in dismissing the suit; and this appeal must, consequently, be dismissed with costs, including those of the hearing before the Full Bench.