APPELLATE CIVIL.

(8)

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Kemball.

1878 *August* 14.

BALAJI BAIKAJI PINGE BY HIS AGENT DHONDBHAT BIN SITARAMBHAT DHUPKAR (ORIGINAL PALINTIFF), APPELLANTS, *v.* GOPAL BIN RAGHU KULI (ORIGINAL DEFENDANT), RESPONDENT.*

Suit by one of two Joint Khots for enhanced Rent—Notice.

One of several tenants in common, joint tenants, or co-parceners (unless he is acting by consent of the others as manager of an estate) is not at liberty to enhance rent or eject tenants at his pleasure. In a suit brought by one of two joint *khots* to recover enhanced rent from a tenant, the notice of enhancement given to the tenant having been signed by the plaintiff alone, and not concurred in by the other joint *khot,—held* by the High Court that the notice was insufficient to render the tenant liable for the increased rent, and that the plaintiff was n o entitled to recover.

Durga Prasad Mytee v. *Joynarain Hazrah*(1) distinguished.

THIS was second appeal from the decision of C. B. Izon, District Judge, of Ratnagiri, in appeal No. 187 of 1876, amending the decree of Gajanan Krishna Bhatavdekar, Second Class Subordinate Judge of Deogarh, in original suit No. 155 of 1874.

Balaji Bhikaji Pinge, who was a joint *khot* with Govind Vithal sued Gopal Raghu for enhanced rent for one year (1872-73), and alleged that he claimed it by virtue of a notice given by him to the defendant. The notice was signed by Babaji alone, and given without the consent of the other joint *khot*, Govind Vithal. Gopal answered that he held at a fixed rent, and pleaded payment of the whole of it to Govind Vithal. The Subordinate Judge held the plaintiff entitled to recover the increased rent, and passed a decree accordingly. In appeal the District Judge firmed three issues—(i) whether plaintiff was entitled to demand enhanced rent on his share of the land ; (ii) whether the notice of enhancement was valid, and (iii) whether defendant had paid the rent in such a manner that plaintiff could not now claim it. On the first and second issues he found in the negative ; and on third, held plaintiff entitled to recover half of the ordinary rent. The follow-

* Second Appeal, No. 69 of 1878.

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ing extract from his judgment contains his reasons :—"I hold it not proved that Gopal occupied at a fixed rent. There would thus appear to be no objection to the *khots* raising the rent. The doubt, however, arises whether one sharer can raise the rent without the consent of the others. In the year in question, plaintiff and Govind (exhibit 40) jointly managed the village, and Govind actually received Rs. 7 as the rent of the entire field. The field has not been divided, and if plaintiff can alone raise defendant's rent, it would seem to follow that he could (indirectly, at least, by an excessive raising of the rent) turn him out of his occupancy under Govind, inasmuch as defendant could not give up half of thd undivided field. I am of opinion that such a power is not possessed by any single co-parcener, and that, therefore, the plaintiff was not entitled to demand enhanced rent on his share of the land. The *khots* must agree as to their demands, or divided the tenants. The notice will, however, be valid as a notice to defendant to pay plaintiff his own share. The payments to Govind which is certain, will, therefore, not be good against plaintiff, who is entitled to recover half the rent proviously paid, Rs. 3-8-0. I find to this effect. I amend the decree, and award Rs. 3-8-0."

Mahadev Chimnaji Apte, for the appellant, relied upon *Durga Prasad Mytee* v. *Joynarain Hazrah*.(1)

Manekshah Jehangirshah, for the respondent, cited *Krishnarav* v. *Govind*.(2)

WESTROPP, C.J.—It is not denied that Govind Vithal (*alias* Govind Jivaji), who is not a party as co-plaintiff or otherwise to this suit, was entitled, as joint *khot* with the plaintiff, equally with him to the lawful rent (whatsoever it may be) for the year 1872-73 ; yet the notice, of the 24th December 1871, of enhancement of rent issued to the tenant, defendant Gopal Raghu, was issued by the plaintiff alone. We concur with the District Judge, Mr. Izon, in regarding that notice as insufficient to render the tenant liable for the increased rent. If any one of several tenants in common, joint tenants, or co-parceners, who is not acting by consent of the

(1) I. L. R. 2 Calc. 474.

(2) Reg. Ap. No. 3 of 1874 ; see page 60 of Printed Judgments for 1875.

others as manager of an estate, is to be at liberty to enchance rent or eject tenants at his own peculiar pleasure, there manifestly would be no safety for tenants, and it would be impossible for them to known how to regulate their conduct, or whom to regard as their landlord. In *Krishnarav* v. *Govind*,(1) decided on the 18th March 1875, Kemball and Nanabhai, JJ., refused to allow an *inamdar* to eject a tenant against the consent of the co-*inamdar*. *Durga Prasad Mytee* v. *Joynarain Hazrah*(2) has been cited to us for the plaintiff. It is unnecessary for us to say whether we could concur in that decision, for there were special circumstances in that case which distinguish it from the present one. It is evident that Govind Vithal, who is the Joint *khot* of the plaintff, did not concur in the notice of the 24th December 1871 (and so the plaintiff assumes in his memorandum of second appeal) ; the plaintiff, therefore, cannot support his claim for enhanced rent.

It appears that, subsequently to the issuing of the notice, the defendant Gopal paid the whole of his ordinary rent, Rs. 7, to Govind Vithal, and the District Judge has given a decree for half that amount (Rs. 3-8-0) to the plaintiff against the defendant Gopal. No cross objection or cross appeal against that portion of the decree having been made by Gopal, it is unnecessary for us to consider whether that direction was correct, and whether the plaintiff's proper remedy for that moiety of the ordinary rent lay against Govind Vithal only.

We affirm the decree with costs.

(1) Reg. Ap. No. 3 of 1874; see page 60 of Printed Judgments for 1875.
(2) I. L. R., 2 Calc. 474.

Note.—The following is the Judgment of the High Court (Kemball and Nanabhai Haridas, JJ.) in *Krishnarav* v. *Govind*, Regular Appeal No. 3 of 1874, decded on the 18th March 1875:—

This is a suit brought by one of two co-sharers in certain *inam* villages to recover possession of two fields some trees, and a will from an admitted tenant In the course of the suit the other co-share was made a co-plaintiff, and he filed a statement denying the right of his co-sharer to sue alone, and declaring that the suit was brought without his consent, he being desirous of allowing the defendant to remain in possession so long as he paid the rent. The relationship of landlord and tenant is admitted, so that the only issue for disposal before us in this regular appeal is, whether the plaintiff is entitled to, in this own name and person, to oust the tenant. It appears that, although

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the Judge has found that plaintiff alone manages the village, lets out lands, and takes them back at his pleasure, still that right has never been acquiesced in by the co-sharer Damodhar, and that only three years ago the plaintiff in, this case brought his suit against Damodhar to establish his right to manage, when a decree was' taken by consent, (exhibit 30), in which was held that plaintiff had faild to prove that he was the sole manager, and it was directed that, in future, he should transact the business with the consent of Damodhar, providing, at the same time, for any losses that might accure in the event of the one acting without the assent of the other. Assuming that the Judge is right, in the face of the award above quoted, inholding that the plaintiff did manage the village in question so as to bind his co-sharer by his acts, we think it impossible to hold that he (plaintiff) empowered by his position to bring a suit not only in the absence, but against the express wish of his co-sharer In support of the Judge's decree we have had quoted to us the Judgment of his Court, to be found at page 141 of the seventh volume of the reports. We do not think, however, that that Judgment has any application to the present case, it having been held there that where a tenant chose to pay a co-sharer other than the recognized representative, he was bound, at the suit of such representative, to pay over again. We need not express any opinon on that ruling, for the question does not arise here. On the other hand he Judgment in S. A. No. 379 of 1873, decided on the 1st April 1874, has been brought to our notice, which exactly meets the present case. In that suit one of three co-sharer sought to obtain rent and oust a tenant; and District Court, in reversing the decree of the Court of first instance, held that the plaintiff, as eldest representative manager, could alone maintain his action, but in special appeal it was ruled that the plaintiff could only sue jointly with his co-sharers, and in that decision we concur. We must, therefore, reverse the decree of the District Judge, without prejudice, however, to any right which either of these two co-parceners may hereafter, either by voluntary partition or by a partition made in a suit between themselves only, acquire to proceed severally against the defendant to recover the lands in dispute, and we order that the plaintiff do pay the costs throughout.