Privy Council Appeal No. 23 *of* 1911. *Bengal Appeal No.* 1 *of* 1908.

Ananda Gopal Gossain, since deceased (now represented by Ram Chandra Gossain and others), and others - - - - *Appellants.*

v.

Nafar Chandra Pal Chowdhuri and another - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH NOVEMBER 1913.

Present at the Hearing:

LORD SHAW. MR. AMEER ALI.
SIR JOHN EDGE.

[*Delivered by* SIR JOHN EDGE.]

This is an Appeal from a decree of the High Court of Judicature at Calcutta, dated the 28th of August 1907, which set aside a decree of the Subordinate Judge of Nadia, dated the 31st of July 1905, and by which the suit was remanded to the Court of the Subordinate Judge for trial of issues which had not been disposed of by him.

The suit was brought to obtain Khas possession of Mouzahs which were comprised in a putni taluk which had been purchased by the Plaintiffs at an auction sale under a decree for rent which had been obtained by the Maharaja of Nadia. The Plaintiffs also claimed mesne profits and other

[59.] J. 270. 125.—11/1913. E. & S.

reliefs. The Defendants raised various defences, to two of which only is it necessary to refer for the purposes of this Appeal. One of these defences was that certain notices which should have been served under section 167 of the Bengal Tenancy Act, 1885, Act VIII. of 1885, had not been served. The other of these defences was that the suit could not be maintained by reason of the non-joinder of one Nitharmoni Debi as a Defendant.

The Subordinate Judge of Nadia found that service of the notices under section 167 of the Bengal Tenancy Act, 1885, had not been proved, and further, that the suit was bad by reason of the non-joinder as a Defendant of Nitharmoni Debi, and dismissed the suit with costs. From the decree of the Subordinate Judge the Plaintiffs appealed to the High Court.

On the Appeal the High Court not being satisfied that there was in any of the villages in question an office where the rent was usually paid, and finding that the notices had been served by proclamation and beat of drum, and by posting them on trees in the villages, held that the notices required by Section 167 of the Bengal Tenency Act, 1885, had been duly served in one of the manners prescribed for service of such notices by the Government Rules then in force.

In the Court of the Subordinate Judge it had apparently been contended that the notices had been served in the manner prescribed for the service of a summons on a Defendant under the Code of Civil Procedure, 1882, and also by proclamation and beat of drum and by posting them, in the presence of not less than two persons, on some conspicuous place in the village. Under the circumstances of this case either manner of service would have been sufficient. In the view

of the evidence which their Lordships take, it is not necessary to express an opinion as to whether there had or had not been effective service by proclamation and beat of drum, and by posting the notices as required by the Government Rules relating to the service of such notices. Their Lordships find on the evidence which was brought to their attention that the notices were served in the manner prescribed for the service of a summons on a Defendant under the Code of Civil Procedure, 1882, which was the Code of Civil Procedure which was in force at the time when the notices were served.

On the Appeal to the High Court the only defect in the framing of the suit which was alleged by the Defendants, who were Respondents to that Appeal, was that Nitharmoni Debi had not been made a Defendant. On the application of the Plaintiffs, who were Appellants in the High Court, the High Court ordered that Nitharmoni Debi should then be made a Defendant, and she was accordingly added as a Defendant. She has not appealed against the decree of the High Court, and it is not necessary for their Lordships to express any opinion as to her position in this litigation. It was not seriously contended before this Board, indeed it could not have been argued successfully, that the omission to make Nitharmoni Debi an original Defendant made the suit bad for non-joinder as against the other Defendants who are the Appellants here. Nor could it have been successfully argued that the order of remand was bad in law, so far as these Defendants are concerned, by reason of the fact that Nitharmoni Debi was added as a Defendant by the High Court when the suit was in appeal before the High Court. Nitharmoni

Debi was not at any time a necessary party to the suit so far as these Defendants—Appellants are concerned, nor have they been prejudiced by the fact that she was added as a Defendant when the suit was in Appeal.

This Appeal fails and their Lordships will humbly advise His Majesty that the Appeal should be dismissed. The Appellants must pay the costs of the Appeal.

In the Privy Council.

ANANDA GOPAL GOSSAIN, SINCE DECEASED (NOW REPRESENTED BY RAM CHANDRA GOSSAIN AND OTHERS), AND OTHERS

v.

NAFAR CHANDRA PAL CHOWDHURI AND ANOTHER.

DELIVERED BY SIR JOHN EDGE.

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