

(1997) 04 GAU CK 0001

Gauhati High Court

Case No: Second Appeal No. 97 of 1989

Biswanath Paul and Others

APPELLANT

Vs

Sadoymani Roy and Another

RESPONDENT

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**Date of Decision:** April 8, 1997**Acts Referred:**

- Assam (Temporarily Settled Areas) Tenancy Act, 1971 - Section 36, 38, 54A, 66
- Assam (Temporarily Settled Areas) Tenancy Rules, 1972 - Rule 21(3)
- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 1, Order 7 Rule 2, Order 7 Rule 4, Order 7 Rule 5, Order 7 Rule 6

**Citation:** (1997) 2 GLR 397**Hon'ble Judges:** J.N. Sharma, J**Bench:** Single Bench**Advocate:** M. Singh, for the Appellant; B.K. Acharyya and S. Darn, for the Respondent**Final Decision:** Allowed

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**Judgement**

J.N. Sarma, J.

This second appeal has been filed by the Plaintiffs. The suit for realisation of rent was filed before the Learned Munsiff No. 1 at Silchar. That suit was dismissed by the Learned Munsiff No. 1 at Silchar and that was numbered as Rent Suit No. 1/85. As against that an appeal being Rent Appeal No. 3/87 was filed before the Asstt. District Judge No. 1, Cachar at Silchar and the Learned Asstt. District Judge No. 1 dismissed the appeal.

2. The Learned Munsiff held that the suit is barred u/s 38 and 66 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 (herein after called the Act) and also barred u/s 10 of the CPC as such the Learned Munsiff by deciding issue No. 2 and 4 held that the suit is not maintainable in the present form. On appeal this finding was affirmed by the Learned Judge.

3. Certain rent deposit cases were pending before the SDC Sonai and it is stated that these cases were filed u/s 38 of the Tenancy Act. The Learned SDC after hearing both the parties allowed the Defendants to deposit the rent as paid for. As against that decision of the Learned SDC an appeal is pending before the Collector which is pending for decision and it was on that court it was held that the present rent suit is not maintainable and it was further held that there is no cause of action for the present suit.

4. The only substantial question of law formulated in this appeal is as follows:

(i) Whether the court below erred in law in holding that the court has no jurisdiction to adjudicate the suit for rent in view of provision of Section 36 and 66 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971.

5. Let us have a look at the relevant section i.e. Section 36, 38 and 66 of the Tenancy Act. Section 36 is quoted below:

36. Rent-suit- No arrear of rent shall be realisable otherwise than by a rent suit filed in the competent Civil Court. The procedure for such rent-suit shall be according to the provisions of the Code of Civil Procedure, 1908 and the plaint shall, in addition to matters mentioned in Rules 1, 2, 4, 5 and 6 and Sub-rule (2) of Rule 9 of Order VII in the first Schedule to Code of Civil Procedure, 1908, specify the area of the land to which the suit relates and where fields are numbered in the village papers, the number and area of each field and, in suits for arrears the amount of the yearly rent which is payable. Where the land to which the suit relates does not form one or more fields numbered in the village papers the plaint shall contain a sufficient description of the land and its boundaries.

Section 38 is quoted below:

38. Deposit of cash rent or money suit - (1) When a landlord refuses to accept any rent when tendered to him by a tenant or when the tenant is in bonafide doubt as to who is entitled to receive the rent, the tenant may make an application to the Revenue Officer in the prescribed manner seeking permission to deposit the cash rent or money rent as the case may be along with the cost of transmission, and fee for notice.

(2) The Revenue Officer, if satisfied after enquiry in the proscribed manner as to the bonafide of the circumstances preventing the tenant from paying the rent to his landlord, shall accept the amount tendered and issue a receipt thereof. The receipt shall be deemed to be a valid discharge of the rent actually, deposited by the tenant.

(3) In cases of refusal to accept the rent the Revenue Officer shall remit the rent deposited by the tenant by Money Order to the last known address of landlord.

(4) In other cases the Revenue Officer shall cause a notice about the fact of deposit of rent in his office fixed in a conspicuous place and also to be served on any person

whom he has reason to believe, is entitled to deposit. He shall thereafter proceed to hear the person or persons interested in the manner prescribed and if there is no dispute, the Revenue Officer shall cause immediate payment. In case of dispute as to the person or persons who are entitled to receive the rent, the amount shall be kept in deposit in a Government Treasury and the dispute shall be referred to a Civil Court having jurisdiction and the amount shall be paid in terms of the final decision of the Court.

6. The provision has been made for deposit of rent in Sub-rule 3 of Rule 21 of the Rules framed under this Act. The Rules framed u/s 38 repeats almost the same thing appearing in Section itself. Both sections as well as the Rules are to be read together for the purpose. Section 66 of the Tenancy Act is quoted below:

66. Matters exempted from cognizance of Civil Court - Except where otherwise expressly provided for in this Act or the Rules made thereunder, no Civil Court shall exercise jurisdiction in any of the following matters,-

(a) Claims to enhancement, reduction or alteration of rent of holdings;

(b) Claims to deposit rent;

(c) Preparation of record - of rights under Chapter X and preparation, signing, or alteration of any document contained therein;

(d) Maintenance of record-of-rights;

(e) Claims to restoration of possession u/s 54A.

In these matters, the jurisdiction shall only be with the Revenue Court or Officer as the case may be.

7. The law regarding express or implied bar of the Civil Court is that a suit is expressly barred if a legislation in expressed terms says so. It is impliedly barred if a statute creates a new offence or a new right and prescribes a particular penalty or special remedy. In such situation unless the contrary is proved the jurisdiction becomes impliedly barred. But always there is the presumption against (sic) of jurisdiction of the Civil Court. Even if jurisdiction is implied or expressly barred a Civil court is competent to examine a question whether the (sic) concerned has done it in accordance with the law provide for the same. Mere (sic) that a special statute provides for certain remedies cannot by itself exclude the jurisdiction of the Civil Courts to deal with a case brought before it in respect of the same matters not covered by the statute. Further if things are done in compliance with provisions of the statute or is in violation or without compliance with some fundamental provisions of the statute as it would make the entire proceedings before the authority illegal and without jurisdiction. A decision which is nullity can be challenged collaterally. An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless it can be gathered from necessary facts and

circumstances. Mere finality clause is not sufficient. Such provisions would, however, exclude the jurisdiction of the Civil Court if there is adequate remedy to do what the Civil Court would normally do in a suit. (See 1969 SC 78 [The State of West Bengal Vs. The Indian Iron and Steel Co. Ltd.](#), (Srinivasa v. State of A.P. and 1975 SC 995 (Bata Shoe Co. v. Jabalpur Corp.).

8. Section 66 of the Tenancy Act came up for consideration before this Court in a number of cases. This Court held that Section 66 is not complete ouster of jurisdiction. The Civil Court has the jurisdiction to decide the question which are not provided in Section 66. In the instant case it was the claim of the Plaintiffs that he has a right to get a paddy rent for the year 1389, 1390 (sic) and 1991 or the value thereof. The plea was taken that Section 66 read with Section 38 bars such a suit. Both the courts below without discussing the matter in detail held that the suit is barred. On consideration of the materials on record above I do not find that the decision of the courts below are correct. A civil court can certainly decide the question of entitlement of a person to receive paddy rent.

9. Accordingly, this second appeal is allowed and it is held that the suit is not barred u/s 66 of the tenancy Act. The question of bar u/s 10 of the CPC also does not arise.

10. Accordingly, the question of law formulated is answered in favour of the Appellant and this appeal is allowed. The judgment of the courts below are set aside and the matter is remitted back to the Learned Munsiff No. 1 at Silchar to decide the other questions afresh.

11. I have heard Sri M. Singh, Learned Advocate for the Appellants and Sri B.K. Acharyya, Learned Advocate for the Respondents.