Jogesh Chandra Ray Vs Fazar Ali

Court: Calcutta High Court

Date of Decision: Dec. 18, 1925

Acts Referred: Bengal Tenancy Act, 1885 â€" Section 102(e)

Citation: AIR 1926 Cal 960 : 96 Ind. Cas. 10

Hon'ble Judges: Suhrawardy, J; Mukerji, J

Bench: Division Bench

Judgement

In S. A. 2060 of 1923.

1. This appeal arises out of a suit brought by the plaintiff against the tenant respondent. The claim was that the plaintiff was entitled as rent to 5 aris

and 8 seers of paddy the price of which according to the market rate for the three years under claim was Rs. 17-12 for which a decree was

sought. The defendant contended that the amount of rent was not 5 aris 8 seers of paddy but Rs. 1-6 0 in money and that though he offered rent at

that rate the plaintiff''s gomasta refused to accept it. The Trial Court relying upon the entry in the Record of Rights held that though the tenant used

to pay 5 aris 8 seers of paddy as rent but the jama was Rs. 1-6- 0 and that the plaintiff was entitled to recover rent at that rate and gave the

plaintiff a partial decree. The plaintiff appealed and the Subordinate Judge who heard the appeal was of opinion that the plaintiff should not be

beard in support of the appeal as he had already executed the decree granted to him by the Trial Court and realized the money thereunder. The

learned Subordinate Judge''s view is that by execuing the decree made by the first Court in his favour he had accepted the correctness of the

decree and could not be heard against it in appeal, For this view he has relied upon the cases of Mani Lal Guzrati v. Harendra Lal Roy 8 Ind. Cas.

79 : 12 C.L.J. 556., and Banku Chandra, Bose v. Marium Begum 37 Ind. Cas. 804 : 21 C.W.N. 232. In the first case the plaintiff prayed for

amendment of his plaint. The Trial Court granted the prayer in spite of the defendant''s objection and ordered that the plaintiff ought to be granted

leave to amend the plaint on payment of Rs. 150 as costs to the defendant. The plaint was amended, costs paid to and received by the defendant.

The defendant moved this Court in its revisional jurisdiction and challenged the order of the Court below allowing the amendment of the plaint. The

learned Judges held that having accepted the costs paid under the order of the Court, the defendant is ordinarily precluded from questioning that

order. But as in the case before their Lordships the defendant had accepted the costs under protest they allowed him to argue against the validity

and legality of the order of the Court below. In the second case, a suit was dismissed for non-prosecution but was restored on an application on

behalf of the plaintiff and the Court made certain orders in respect of the payment of the defendants'' costs incidental to the application and the

defendants got their costs and obtained an allocation. The next friend of the plaintiff gave security for Rs. 2,500 and also paid Rs. 250 within the

time mentioned in the order to the defendants'' attorney who accepted the same and also had his bills taxed and obtained an allocation amounting

to Rs. 473. The defendant appealed against the order restoring the suit; and it was objected on behalf of the plaintiff that as the defendant had

taken advantage under the order appealed against they were not competent td challenge it in appeal. The learned Judges sitting in appeal on the

Original Side held that the defendants having talken benefit under the order were precluded from appealing against it. The principle of law that is

deducible from these cases which were relied upon in this case is that where a party has derived any advantage and taken Benefit under the order

of the Court he is to be deemed to have acquiesced in it and should not be allowed to challenge it at any subsequent proceeding or by way of

appeal. The facts of the present case are that the plaintiff claimed a decree for Rs. 17-12-0 being the value of 5 aris and 8 seers of paddy at the

market rate. The defendant denied that the plaintiff was entitled to-the amount claimed but admitted that he was entitled to a lesser amount and the

decree was made in accordance with the admission of the defendant though that decree determined the question, whether rent was payable in

money or kind, the amount decreed to the plaintiff was admittedly due to him. In appeal he claimed a larger amount than what was decreed. If he

succeeds in the appeal he will get a decree for the balance. The order of the Trial Court giving him a decree at a lower rate will not be disturbed in

appeal to that extent. The principle of the cases cited above, therefore, does not apply to the facts of the present case. The plaintiff by taking out

execution and realising the amount due under the decree has admitted, and there is no reason why he should not, that at least so much was due to

him. We do not see any reason as to why he should be precluded from claiming more than what was decreed to him by the first Court. He has not

derived any advantage or taken any benefit under the decree appealed against which was not available to him even on the admission of the

defendant. We accordingly consider that the view taken by the lower Appellate Court that the plaintiff is precluded from prosecuting this appeal in

the circumstances of this case is wrong.

2. We have next to consider whether it is a fit case which should be remanded to the lower Appellate Court for a rehearing of the appeal on the

merits. In, the view that we are taking in the other three analogous Appeals (S. A. Nos. 2749 and 2750 of 1923 and 1032 of 1924), we do not

think that it will serve any useful purpose. The Munsif relied for his decision in favour of the defendants upon a certain entry in the Record of

Rights. The oral evidence on behalf of the plaintiff consists of the depositions of his gomastha which does not go further than impugning the

correctness of the Record of Rights. The result of our remanding the case for a re-hearing of the appeal will be that the lower Appellate Court will

follow our decision in the other analogous appeals. In this view we think that this appeal ought to be dismissed without costs.

3. In S. A. Nos. 2749 and 2750 of 1923 and 1032 of 1924. In these cases the plaintiffs sued for rent at so many aris of paddy per year as was

payable by the tenant defendants. The defence was that rent was really payable in money, but in lieu of money the tenants used to pay paddy to the

landlords. Both the Courts below have dismissed the plaintiff''s claim as made and decreed the suits according to the admission of the defendants

relying upon the entries in the Record of Rights. The entry in the Record of Rights is in the following way: Under the column "" rent payable "" is

entered in the first case for instance, 10 aris of paddy. In the column where special conditions and incidents of the tenancy are recorded the remark

is, 10 aris of paddy in lieu of Rs. 2-8-0 jama. The Courts below relying upon this entry have held that the plaintiff is entitled to the quantity of

paddy mentioned in the Record of Rights but in lieu of it he is entitled to Rs. 28 per year and not at the market value of the paddy demanded in the

plaint. It is argued on behalf of the appellant that they mis-construed the Record of Rights, that what is meant by the entry in the Record of Rights is

that the original rent was Rs. 2-8-0 which was subsequently paid in kind, the equivalent to it being 10 aris of paddy. We are unable to accept this

contention. Reading both the columns of the Record of Rights together the conclusion is irresistible that what is meant is that rent was fixed in

money but that paddy equivalent was being paid. u/s 102 (e), Bengal Tenancy Act, the Settlement Officer has to record the rent payable at the

time the Record of Rights is being prepared. As he found that the rent paid by the tenant at that time was 10 arts of paddy here corded it as such

under that column. Under col. 4, he has recorded the special condition and incident of the tenancy and the peculiar incident he found to be that rent

was really Rs. 2-8-0 but it was paid in kind, 10 aris being the equivalent of the money rent. The conclusion that can be arrived at on a

consideration of the whole of this document is that the real rent is Rs. 2-8-0 and paddy was paid in lieu of the money rent, presumably for the

convenience of the tenant. The other cases stand on the same footing. In this view we hold that the judgments and decrees of the lower Appellate

Court are right and should be sustained. These appeals are dismissed with costs, one gold mohur in each case.