(1947) 01 CAL CK 0002

Calcutta High Court

Case No: Civil Rev No. 334 of 1946

Bama Charan Gain and Others		APPELLANT
	Vs	
Jitendra Nath Chakravarty		RESPONDENT

Date of Decision: Jan. 14, 1947

Judgement

Biswas, J.

The Petitioners in this case are Defendants in a suit which the Opposite Party instituted against them for recovery of lent in respect of a holding appertaining to C. S. Khatian No. 17. The claim with cesses and damages was laid at Rs. 4-9-6 only, the annual rate of rent being alleged to be Re. 1-2-0. The defense was that the Plaintiff was not the sole landlord and that inasmuch as the Plaintiff had not joined the co-sharer landlords, the suit was bad for defect of parties. The learned Munsif, who was empowered to exercise final jurisdiction in rent suits up to a certain value under cl. (b) of sec. I53 of the Bengal Tenancy Act, gave effect to the defense plea, and in the result dismissed the suit as not being maintainable. The Plaintiff Opposite Party took an appeal which was heard by the 2nd Additional Subordinate Judge of Alipore. The appeal was allowed. Hence the present Rule from the judgment of the lower Appellate Court. The only point raised in the Rule is that the appeal to the learned Subordinate Judge was incompetent under sec. 153 of the Bengal Tenancy Act. In answer the Plaintiff Opposite Party contends that the case falls within the exception to this section in so far as the question involved in the suit is " a question of the amount of rent annually payable by a tenant" within the meaning of the section.

2. A number of decisions have been cited before me on either side. Among others, reference may be made to the cases of Wajuddi Pramanik v. Md. Balaki Moral (1924) 80 C. W. N.683, Munshi Salimuddin Ahammad v. Rahim Sheikh (1928) 30 C. W. N. 850. and Sm. Rasidunnessa Khatun v. Nabin Chandra Nath (1939) 69 C. L. J. 383. cited on behalf of the Petitioners, and the cases of Sudhanya Santra v. Basanta Kumar Sarkar I. L. R. 49 Cal. 688: (1921) 84 C. L. J. 579. Sasi Bhusan Rudra v. Beni Madhab Samanta (1906) 8 C. L. J. 519, Shrimutty Poresh Moni Dassya v. Nobo Kishore Lahiri (1903) 8 C. W. N. 193.and the Full Bench decision in the case of Asirun

Bibi v. Sharif Mondul I. L. R. (1890) Cal. 488. cited on behalf of the Opposite Party. It is not necessary for me to go into these cases. Suffice it to say that it is not quite easy to reconcile all these decisions. Some of them, with due respect to the learned Judges who decided the cases, are also incapable of comprehension. By way of illustration, I may refer to the cases of Wajuddi Pramanik v. Md. Balaki Moral (1924) 30 C. W. N. 63 . and Munshi Salimuddin Ahammad v. Rahim Sheikh (1928) 30 C. W. N. 850. In the case of Wajuddi Pramanik v. Md. Balaki Moral (1924) 30 C. W. N. 63. Suhrawardy. J., in the course of discussing this particular point observed as follows:

As we have observed, there is no dispute with regard to the rent payable in respect of the entire holding, nor is there any question of the amount of rent payable to the Plaintiff being established that the Plaintiff has a right to the 4 annas share of the rent.

3. And then immediately thereafter the learned Judge proceeds to say:

The only objections to the Plaintiff''s light to recover rent that the Plaintiff had other co-sharers had so the suit was bad for defect of parties....

4. But if there was an objection to the Plaintiff''s rights to recover rent on the ground that the Plaintiff had other co-sharers it becomes difficult to understand the previous statement, " it being established that the Plaintiff has a right to the 4 annas share of the rent." The learned Judge seems to be begging the question which was in dispute. The Plaintiff claimed, rent in the suit in respect of a 4 annas share of the tenancy. If the Plaintiff''s right to the 4 annas share could be taken to have been established, there could, of course, have been no question at issue regarding the amount of rent payable to the Plaintiff, but the moment it was pleaded that there were other co-sharers interested in the 4 annas share claimed by the Plaintiff, that, in my humble judgment, at once raised the question as to whether the rent claimed by the Plaintiff was the amount payable to him in his share. Speaking for myself, I do not see how an objection on the ground that there were other co-sharers entitled jointly with the Plaintiff to the rent claimed could possibly avoid raising a question as to the amount of rent payable by the tenant. Then again turning to the other case [Munshi Salimuddin Ahammad v. Rahim Sheikh (1926) 30 C. W. N. 860 in which judgment Was pronounced by Mukherji, J., the learned Judge deals with this question at pp. 851 and 852 but the paragraph in which he sums up his views is somewhat difficult to follow. The paragraph, is in these terms:
In a suit for rent the tenant may dispute the amount of the tent of the tenure or holding or the landlord''s title to the entire rent or to the share of the rent which he claims and may allege that the amount of the rent or the share is less. In each case, if the defence is pressed, the landlord is called upon to prove the amount of rent or is put to the proof of his title to the share or to the amount which he claims, as there is a real controversy between the parties on these points and the Court has necessarily to decide a question of the amount of rent or the rent payable to the

landlord, whichever way the decision may go. There may be cases, however, where the aforesaid defences of the tenants are dependent entirely on his averment that there is a co-sharer or there are co-sharers. In those cases it becomes necessary to go into these defences only in the event of the Court finding that there is a co-sharer or that there are co-sharers. If the finding be that there is no co-sharer of the Plaintiff the other questions do not arise and there is no occasion or necessity for the Court to decide the question of the amount of rent. The decision of the Court in such cases, whether dismissing the suit on the ground of non-joinder of Plaintiffs or decreeing the suit in Plaintiff''s favour, does not expressly decide and cannot by implication be held to have decided the question.

5. It is the latter portion of these observations which create difficulty. Where the defence is that the Plaintiff has other co-sharers it is not difficult to understand that such a defence will involve the question of the amount of rent payable to the Plaintiff. What is difficult to follow is the other statement of the learned Judge.

If the finding be that there is no co-sharer of the Plaintiff the other questions (including; the question of the amount of rent payable to the Plaintiff) do not arise and there is no occasion or necessity for the Court to decide the question of the amount of rent.

6. If I may say so, a finding that there is no co-sharer necessarily implies a decision to the effect that the Plaintiff alone is entitled to the amount of rent claimed, assuming, of course, there is no other defence, such as a plea of payment. Equally difficult it is to follow the next statement of the learned Judge.

The decision of the Court in such cases, whether dismissing the suit on the ground of non-joinder of Plaintiffs or decreeing the suit in Plaintiff''s favour, does not expressly decide and cannot by implication be held to have decided the question.

7. If the suit is dismissed on the ground of non-joinder, that pre-supposes a determination by the Court that there are co-sharers, who had not been joined as parties, and that, as already pointed out, involves a decision that the Plaintiff is not entitled to the amount of rent claimed by him. If," on the other hand, the suit is decreed in the Plaintiff''s favour, that is to say, the Plaintiff''s claim is allowed in full, that also, in my judgment, cannot but involve a decision as to the amount of rent, because it means that the Plaintiff is the sole landlord and accordingly, entitled to the full amount claimed by him. On a close examination of the observations of the learned Judge in this case, therefore, I personally find it difficult to extract from them an interpretation of the relevant provisions of sec. 153 or of the numerous decisions which have clustered round the section, such as may afford unerring guidance in other cases.

8. On this ground it is much safer to proceed upon the language of the Statute and upon the actual facts of the case in hand. The first question which arises upon the construction of the section is as to the meaning of the expression "in any suit

instituted by the landlord for the recovery of rent." Can the present suit be said to come within the description of such a suit? As framed the suit was undoubtedly a suit by a person claiming to be the.sole landlord for recovery of 16 as. of the rent due in respect of the holding. Can it be said that the tenant''s defence altered the nature of the suit? In view of sec. 148A of the Bengal Tenancy Act the mere fact that a suit is by a co-sharer landlord, would not necessarily make it a suit other than a suit for rent under the Act. A co-sharer landlord''s suit under sec. 148A, however, requires the Plaintiff to join the other co-sharers as Defendants. If that is not done, the suit will be a mere suit for recovery of money. In this case the learned Munsif decided that there were other co-sharers besides the Plaintiff entitled to the rent claimed, some of whom had been left out. The suit accordingly failed for defect of parties, and in so far as the Plaintiff did not take any steps to amend his plaint and join those other co-sharers as parties, it became a suit for money and an appeal would lie to the District Judge. Assuming, however, that the present suit could be treated as a suit under sec. 153 of the Bengal Tenancy Act, the next question would arise whether there was a question of the amount of rent annually payable by the tenant. It may be observed that in order to attract an appeal it is not enough that such a question, or any of the other questions indicated in the exception clause, should be involved in the suit. What the statute requires is that the decree or order which is sought to be appealed against, must decide a question of that kind. It may be conceded, having regard to the defence raised in the present suit, that a question of the amount of rent was involved in the suit. Still the point has to be considered whether or not the learned Munsif did decide that question, the only decision which he gave was that the suit was bad for defect of parties. This was based on the finding that there were other co-sharers. This, in its turn, carried with it the implication that the Plaintiff was not entitled to the amount of rent which he claimed. The amount was, on the Plaintiff''s own showing, the rent due for the entire holding. If the Plaintiff was not the sole landlord, but there were other co-sharers, it followed on Plaintiff''s own case that he was not entitled to the whole amount claimed by him. The finding of the learned Munsif that there were other co-sharers, therefore, carried, with it, as I have said, the implication that the Plaintiff was not entitled to the amount of rent which he claimed. It is quite true that the Court did not decide what the extent of the Plaintiff''s share was. There was no adjudication, therefore, as to the precise amount which he was entitled to. All the same, the decision did amount to a determination that the Plaintiff was not entitled to the amount of rent which he claimed to be the rent payable to him. In this view of the matter one does not see why the decree under appeal may not be regarded as having decided, by necessary implication, if not in express terms, a question as to the amount of rent payable by the Defendants to the Plaintiff. Upon the facts of the case, therefore, I hold that the appeal to the lower Appellate Court was competent. The Rule is accordingly discharged with costs, hearing-fee, and one gold mohur.