Manmatha Pal Chowdhury and Others Vs Surendra Nath Bose and Others

Court: Calcutta High Court

Date of Decision: Jan. 29, 1923

Citation: 85 Ind. Cas. 162

Hon'ble Judges: Rankin, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. This is an appeal by the defendants in a suit for arrears of rent. We shall refer briefly to the antecedent history so as to make intelligible the

points in controversy between the parties.

2. On the 22nd August 1913 the plaintiffs sued the defendants for rent of the disputed property for the years 1315 to 1318. That suit was decided

by the Subordinate Judge, on the 27th of May 1916. The decree was modified on appeal by the District Judge on the 3rd December 1918. On

second appeal to this Court the decree was further I modified on the 22nd July, 1921. In the meanwhile on the 21st August, 1914, the plaintiffs

instituted another suit against the defendants for rent from the Chaitra instalment of 1318 to the Ashar instalment of 1321. That suit was decreed

and the decree was apparently satisfied. Subsequently on the 14th April, 1919, the plaintiffs instituted the present suit for recover--of what is called

excess rent in respect of the period covered by the second suit as also the rent which has ""accrued due from 1322 to 1325."" The Subordinate

Judge decreed the claim on the 28th June 1920. That decree has been assailed before up substantially on three grounds, namely, first, that the rent

in respect of the period not covered by the previous litigation should be decreed at the rate fixed by the High Court, in the first suit; secondly, that

the claim in respect of the period covered by the second suit is not maintainable; and thirdly, that cesses have been decreed at a rate higher than

that leviable.

3. As regards the first point, there is clearly no room for serious controversy. In the first suit the plaintiffs invited the Court to adjust the rent

payable in respect of the lands in the occupation of the defendants. It was found that land had accreted to the original tenancy and that grounds

existed for variation in the rate of rent. The ultimate result was that the rent was fixed at Ks. 917-13-0 by this Court in respect of all the lands in the

occupation of the tenants. It is plain that for the period now in suit, that is, from 1322 to 1325 which is subsequent to the time of commencement of

the adjusted rate as determined by the decree of this Court, the plaintiffs are entitled to a decree at that rate only. The decree will be varied

accordingly.

4. As regards the second point, the plaintiffs are in a real difficulty. When they instituted the second suit the first suit was already in progress. In the

first suit they had prayed for adjustment of rent, that is, rent in respect of the excess land in the occupation of the tenants as also for settlement of

rent at a higher rate than that paid before. In the second suit, however, they did not repeat this claim, and satisfied themselves with a demand for

rent in respect of the original lands of the tenancy at what is called the old rate. In the plaint they stated expressly that they reserved the right for

settlement of rent of the excess quantity of land, and, we gather, also for recovery of rent at the enhanced rate. No order, however, allowing such

reservation was made by the Court. Consequently, the question arises, whether the plaintiffs are entitled to claim, in respect of the period covered

by the second suit, a sum in addition to what they recovered in that litigation. We are clearly of opinion that toe claim is barred. It is now well-

settled, that in respect of excess lands in the occupation of a tenant, the landlord is entitled to recover what is called back rent; in other words, the

landlord is entitled in any litigation to have an enquiry, as to the exact area in the occupation of the tenant and the rent recoverable in respect

thereof for the years in suit. This was decided by this Court in the cases of Assanullah Bahadur v. Mohini Mohan Das 26 C. 739 : 1 Ind. Dec.

1072, and Jagannath Manjhi v. Jumman All Patwari 29 C. 247 and was re-affirmed in Ejel Mullick v. Felai Mullick 28 Ind. Cas. 498 : 21 C.L.J.

309. Consequently, in respect of the excess land, the plaintiffs were competent to put forward a claim in the second suit. This they omitted to do.

They might also have claimed rent, in respect as well of the original land as the additional land, at the higher rate, in the same way as they had done

in the first suit. The decree in the second suit would then have been dependent upon the result of the first litigation. We are accordingly of opinion

that the claim in respect of excess land and the claim at the enhanced rate for the period covered by the second suit is not maintainable. In this

view, it is not necessary to consider the question of limitation which has been raised by the appellant and sought to be supported by the decision of

the Judicial Committee in Huro Pershad Roy v. Gopal Das Dutt 9 I.A. 82 : 9 C. 225 : 12 C.L.R. 129 : 6 Ind Jur. 546 : 4 Sar. P.C.J. 363 : 4 Ind.

Dec. 280 (P.C.), as explained in Hurro Kumar Ghose v. Kali Krishna Thakur 17 C. 251 : 8 Ind. Dec. 705. Nor need we consider the precise

effect of the decision of the Judicial Committee in Hem Chandra Chowdhury v. Kali Prosanna Bhaduri 30 C. 1033 : 8 C.W.N. 1 : 30 I.A. 177 : 8

Sar. P.C.J. 529 (P.C.); but this much is incontrovertible that during the pendency of the first suit where a claim was made for adjustment of rent in

respect of additional land, the claim for assessment of rent at the enhanced rate could not possibly be taken to have suspended the assertion of a

similar claim in respect of the subsequent period covered by the second suit.

5. As regards the third point, we find that there are no materials on the record which can enable the Court to hold that cesses cannot be recovered

at the rate claimed in the plaint. In view of the comparatively small sum in controversy, we do not think it desirable to remand the case for further

enquiry into this point. The decree will consequently stand in respect of cesses for the period from 1322 to 1325 as allowed by the Subordinate

Judge. But this will not be taken to preclude in investigation into the question of the rate of cesses recoverable in respect of any subsequent period.

6. The appellants are entitled to their costs in this Court. We assess the hearing fee at three gold mohurs.