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Rakhal Das Adhya and Others Vs Maharaja Bahadoor Sir Prodyot Kuamar Tagore, Kt.

None

Court: Calcutta High Court

Date of Decision: Feb. 16, 1910

Acts Referred:
Land Registration Act, 1876 â€" Section 78

Citation: 6 Ind. Cas. 121

Hon'ble Judges: Teunon, J; Mookerjee, J

Bench: Division Bench

Judgement

1. The sole point in controversy in these appeals is whether the plaintiff-respondent is debarred by reason of the provisions of Section 78 of the

Land Registration Act (Act VII of 1878) from realising from the defendants appellants a four annas share of the rent payable in respect of the

holdings occupied by them, The suits for rent, oat of which these appeals arise, were tried in the Court of first instance in two sets by two different

officers. One of them upheld the contention of the defendants that Section 78 operated as a bar, while the other took a different view. Upon

appeal the learned District Judge has held that Section 78 does not operate as a bar. He has, therefore, reversed the judgment in one set of cases

and affirmed it in the other set. The defendants have now appealed to this Court, and reiterated the objection that Section 78 operates as a bar.

2. The circumstances, under which the plaintiff claims to realise a four annas share of the rent payable by the defendants, are not disputed. The

lands are comprised in seventeen revenue paying estates. The plaintiff is registered under the Land Registration Act as the proprietor in respect of

one of these estates known as No. 14. The books of the Collector show that a two annas thirteen gandas and (sic) share of the entire lands is

comprised within the estate. On this basis, it is argued by the defendants that the plaintiff is entitled to realise from them a share of the rent precisely

proportionate to the share of the lands comprised in the estate of which the plaintiff is the proprietor. In support of this position reliance is placed

upon the provisions of Section 78 of the Land Registration Act. A close examination of the section, however, makes it reasonably plain that it has

no application to cases where the land in possession of the tenant is comprised in more than one estate. Section 78 provides that no person shall

be bound to pay rent to any person claiming such rent as proprietor of an estate in respect of which he is required by the Act to cause his name to

be registered, unless the name of such claimant shall have been registered under the Act. The section further provides that no person, being liable

to pay rent to two or more such proprietors holding in common tenancy, shall be bound to pay to, any one such proprietor more than the amount

which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor is registered bears to the

entire estate. It is clear that the proprietor mentioned in this section is the proprietor of one estate within the ambit of which the lands in possession

of the tenants are comprised. The Legislature had not in view the contingency which has happened in the present case, namely, a case where the

lands in occupation of the tenants are comprised in a number of estates in one or more of which alone the plaintiff is interested. It is obvious,

therefore, that Section 78 does not operate as a bar. In this view we need not discuss whether the cases of Parashmoni Dassi v. Nabo Kishore

Lahiri 30 C. 773 and Deohi Singh v. Lakshman Roy 30 C. 880, to which reference was made at the bar, took a correct view of the applicability

of the provisions of Section 78 to totally different circumstances. It cannot be disputed that if Section 78 is no bar, there is no valid answer to the

claim of the plaintiff, for it has been found by the District Judge that by amicable arrangement among the owners of the several estates, the plaintiff

has, for many years past, collected a four annas share of the rent in respect of the lands comprised in estate No. 14 and this is precisely the claim

which the plaintiff seeks to enforce in these suits.

3. The result is that the decrees made by the District Judge must be affirmed and these appeals dismissed with costs.