

(1919) 02 CAL CK 0030

Calcutta High Court

Case No: None

Jogesh Chandra Roy

APPELLANT

Vs

Nibaran Chandra Poddar and
Others

RESPONDENT

Date of Decision: Feb. 27, 1919

Citation: AIR 1919 Cal 78 : 50 Ind. Cas. 276

Hon'ble Judges: Greaves, J

Bench: Single Bench

Judgement

Greaves, J.

This is an appeal by the plaintiff against the decision of the District Judge of Chittagong, dated the 22nd March 1917, affirming a decision of the Munsif of the 12th December 1915.

2. The plaintiff sued for rent in respect of certain premises, his allegation being that he had purchased a share in No. 3 in a revenue-paying estate. The defendants admitted holding the land and did not dispute that rent was payable by them, but they said that the rent was payable to different persons and accordingly under the provisions of Section 149 of the Bengal Tenancy Act they paid the amount of rent in Court. Thereupon a third person, who under the provisions of Section 149(3) claimed the money, brought a title suit against the present appellant. The title suit failed but the Court held that both the third party and the present appellant were each entitled to a share in the land in respect of which the plaintiff claimed rent in the rent suit. As the result of the decision of the title suit the Munsif on the same date that the title suit was decided dismissed the plaintiff's case in view of the findings in the title suit, and the District Judge upon appeal affirmed the order of the Munsif and said that in view of the decision in the title suit the plaintiff's suit was not maintainable in its present form.

3. On behalf of the respondent in this appeal the point is taken that no appeal lies having regard to the provisions of Section 153 of the Bengal Tenancy Act. That

section provides that no appeal lies from a decree or order passed, as in this case by the District Judge, unless the decree or order has decided a question relating to title to land as between parties having conflicting claims thereto or a question of the amount of rent annually payable by a tenant. It is said on behalf of the appellant that as his rent suit was decided on the ground of the result of the title suit, a question of a title was decided by the District Judge and that, therefore, an appeal lies.

4. I do not think that this is correct. Section 153 expressly says that the decision of title must be as between parties having conflicting claims thereto. Now the defendants who are sued in the rent suit made the conflicting claim as against the plaintiff to the land in suit and, therefore, it seems to me that it is impossible to say that there was any decree or order deciding a question of title between parties having conflicting claims to the land. Then again the rent suit was for rent in respect of the area of land comprised in the suit. The tenants did not deny the liability to pay rent, nor did they question the amount which they had to pay. All they said was that it was payable to somebody else other than the plaintiff. All that the decision in the title suit amounts to is that a part of the rent is payable to the plaintiff and apart to the third party who brought the title suit. Under these circumstances I cannot see how the lower Appellate Court has decided any question as to the amount of rent annually payable by a tenant. The words to my mind clearly mean not apportionment of rent as between two persons but the amount or rate of rent payable in respect of the land itself.

5. For these reasons I think that the preliminary objection is well founded and I hold that no appeal lies, and for these reasons I must dismiss this appeal with costs.

6. But there is a Rule before me which was granted by the Chief Justice and Mr. Justice Teunon. It is said that sitting alone I should not decide this Rule, but it seems to me that it would be a waste of time of the Court as the matter is before me that I should not deal with the Rule as well. Now the rent suit, as I have already stated, was for a definite amount of rent in respect of the whole land. The plaintiff says that having failed to establish his claim to the whole of the rent he was entitled in that suit to recover a proportionate share of the rent to which he was entitled by virtue of the decision in the title suit. I have no doubt that if the plaint had been amended in that suit, the plaintiff could have succeeded in recovering his share. But no amendment was asked for so far as I can gather, and that being so, I think the Munsif was justified in saying that inasmuch as the suit was framed as a claim for rent of the whole land, in that form it could not be entertained. This is all he has done. The District Judge has taken the same view and I am not disposed to say that his jurisdiction has been wrongly exercised.

7. This being so, the Rule also fails and must be discharged with costs, one gold mohur.