(1930) 03 CAL CK 0028

Calcutta High Court

Case No: Appeal From Appellate Decree No. 527 of 1927

Jatindra Nath Haldar and Others		APPELLANT
	Vs	
Aswini Kumar Mandal and Others		RESPONDENT

Date of Decision: March 25, 1930

Final Decision: Dismissed

Judgement

1. This appeal arises out of a suit for rent brought by the Plaintiff-Appellants on a kabuliyat of 1313 executed by the tenant Respondents and their predecessors at the rate of Rs. 627-13 a year. The facts are that there are 10 co-sharer landlords from 3 of whom who had a 3/10 this share in the property the tenants get a lease in 1299 for 600 bighas of land at the rate of 10 annas 3 pies per bigha. In 1313 they obtained a further lease from the remaining 7 landlords for 980 bighas of land on the same terms and at the same rate of rent as mentioned in the lease of 1299. It appears that since 1313 no rent has been paid in respect of this jama. In this suit for rent which was instituted in 1919 an objection was taken on behalf of the Defendants that they had been dispossessed from a portion of the leasehold and accordingly they claimed that the entire rent should be suspended. It has been concurrently found by both the Courts below that the Plaintiffs have dispossessed the Defendants from some of the lands included in the lease; and in that view the Courts below have ordered suspension of rent. This appeal is by the landlords and it is argued on their behalf that on the terms of this kabuliyat there should have been no total suspension of rent but that a proportionate decree ought to have been allowed in favour of the Plaintiff"s. It is argued, relying on the principle enunciated in Katyayani v. Udoy L.R. 52 IndAp 160 s.c. ILR 53 Cal. 447:30 C.W.N. 1 (1924), that the doctrine of suspension has no application in a case where the rent is fixed at so much per bigha a year. This ground was not taken in any of the Courts below. The sole question upon which the case was fought in those Courts was whether there was any dispossession by the landlords. It is not proper that an objection like this which was not taken in any of the Courts below should be allowed to be taken in this third

Court. Moreover, the kabuliyat which has embodied the contract between the parties has not been placed before its and we have not the advantage of either interpreting it ourselves or getting the assistance of the Courts below in interpreting it. In the grounds of appeal in this court no specific ground upon this point has been taken. There is a general ground that the Court of appeal below erred in law in its appreciation of the law relating to suspension of rent. It is not permissible to take advantage of a ground like this to urge a ground based upon specific facts and not arising from the decision of the Courts below. In these circumstances we are of opinion that we should not allow the Appellants to raise this ground for the first time in this Court at the hearing of the appeal.

2. There is another difficulty in the way of allowing this ground to be raised at this stage. From the decision of the court of first instance an appeal was taken to the Lower Appellate Court, appeal was heard on the 26th September 1921, and the Plaintiffs prayed for a local investigation in order to determine the exact area in possession of the tenants. The learned Judge accordingly allowed the Plaintiffs'' prayer for local investigation and sent the case back to the trial Court for holding such an investigation at the Plaintiffs'' costs. The Plaintiffs did not deposit the necessary costs in connection with the local inquiry and the record was thereupon sent back to the Appellate Court on the 20th December 1921. The appeal was again heard with the result that the decree of the trial Court was upheld and the Plaintiffs'' suit dismissed. If we allow the appeal and accept the contention raised by the Appellants the result will be that we will have to order an enquiry as to the extent of the land in the Defendants possession. The Plaintiffs got an opportunity to have it ascertained and they failed to avail themselves of it. It is not proper at this stage to allow them again to have an investigation made. The suit as brought cannot succeed. It is a suit for a specified amount for rent for a number of years. The question on which the parties fought in the Courts below was whether had been dispossessed from any portion of the land leased. It seems to have been conceded by both the parties that if there was dispossession there would be suspension of rent. As the Plaintiffs are not entitled to entitled to proportionate rent, the such as it stands must fail. If the Plaintiffs wanted proportionate decree they ought to have claimed so in the plaint or in the course of the trial. Not having done so, we do not think that we should allow this point to be raised here and to order retrial on a new case not made either in the plaint or before the courts below. The result is that this appeal is dismissed with costs.