The Port Canning and Land Improvement Company Limited Vs Heirs of Late Bahir Molla and Others

Court: Calcutta High Court

Date of Decision: May 29, 1925

Acts Referred: Bengal Tenancy Act, 1885 â€" Section 46
Limitation Act, 1963 â€" Section 14

Citation: 92 Ind. Cas. 37

Hon'ble Judges: Mukerji, J; Ewart Greaves, J

Bench: Division Bench

Judgement

Ewart Greaves, J.
This is an appeal by the plaintiffs against a decision of the learned District Judge of 24-Pargannas, affirming a decision of

the Subordinate Judge of the Third Court of Alipur. The suit out of which this appeal arises was brought by the Port Canning and Land

Improvement Company, Ltd., as landlords to recover from the defendants who were non-occupancy raiyats rent for a period of seven years from

132U to 1326.

2. There is no dispute with regard to the years 1323 to 1326 inclusive. But the dispute between the parties is as to whether or not the rent for the

years 1320; 1321 and 1322 is barred by limitation. The appellants contend that their claim for these three years is not barred and they say that this

is so because during these years they were prosecuting a claim under the provisions of Section 46 of the Bengal Tenancy Act. These proceedings

were commenced on the 28th of March 1913. Now, the suit u/s 46 was dismissed by the first Court, and by the lower Appellate Court. But on

appeal to this Court the claim for enhancement was allowed on the 24th of June 1919, this Court holding in second appeal that the appellants were

entitled to have a fair and equitable rent fixed by the Court. The matter was sent back to the first Court for the fixing of a fair and equitable rent and

when this was fixed there was an appeal against the first Court''s decision and the fair and the equitable rent was not finally fixed until some time in

the year 1923. The present suit was commenced on the 14th April 1920, rent being claimed at the old rate as, for the reasons which I have stated,

the fair and equitable rent directed to be fixed by this Court on the 24th June 1919 had not at that time been determined. But the appellants say

that it was necessary for them to commence their suit claiming rent at the old rate, as they did, because if they had left the matter to run any further,

in their view the land was not sufficient in value to realize the decree for rent which they ultimately would obtain. It thus appears that the appellants

support their claim for the rent for the three years 1320, 1321 and 1322 on the ground that, they say, their claim for the rent must be deemed to

have been in suspense from March 1913 until June 1919 when the Section 46 case was in progress and they say they could not really have

brought their suit during these years as rent was not fixed and finally determined.

3. The defendants on the other hand contend that by virtue of the provisions of Article 2(6) of the Third Schedule to the Bengal Tenancy Act the

rent for these three years is not now recoverable.

4. Article 2(b) provides that the period of limitation for the recovery of an arrear of rent in other cases not provided by the previous Sub-section is

three years from the last day of the agricultural year in which the arrear fell due. The respondents further contend that proceedings u/s 46 are

merely proceedings for ejectment and it has been held in various cases of this Court that during the pendency of a suit for ejectment the claim for

rent is not in abeyance by reason of the suit. Now, in my view it is not right to say that the proceedings u/s 46 are merely proceedings for ejectment

for I think they are proceedings not merely for ejectment but to have a fair and equitable rent assessed by the Court. If the tenant has refused to

accept the agreement filed under the provisions of Section 46 it is then alone that a suit for ejectment under that Section can be commenced. There

is nothing, therefore, I think, in this point.

5. But the real difficulty appears to be whether there are any provisions of the Limitation Act which provide for the suspension of the rent during

the pendency of the Section 46 proceeding unless there is to be found some such provision in the Limitaiion Act then the provisions of Article 2(b)

of Schedule III of the Bengal Tenancy Act must operate. Now, it seems to me that the only Section of the Limitation Act which could be

applicable is Section 14 of that Act which provides that in computing the period of limitation prescribed for any suit the time during which the

plaintiff has been prosecuting with due diligence another civil proceedings whether in a Court of first instance or in a Court of Appeal against the

defendant, shall be excluded where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which from

defect of jurisdiction or other cause of a like nature is unable to entertain it. Now, the real question, therefore, is whether the proceedings u/s 46 of

the Bengal Tenancy Act can be treated as proceedings founded upon the same cause of action as the claim in this suit. This really depends, I think,

upon the construction'' to be put on the word ""agreement"" in Sub-section (7) of Section 46 of the Bengal Tenancy Act. Section 46, Sub-section

(1) provides that no suit for ejectment shall be instituted against a non-occupancy raiyat unless the landlord has tendered an agreement to pay an

enhanced rent, and the tenant within three months before the institution of the suit has refused to execute it. Sub-section (2) provides that a landlord

tendering an agreement may file it in the office of the Court for service, on the raiyat and that it. shall be served forthwith and that such service shall

be deemed to be a tender. The ""agreement"" referred to in Sub-sections (1) and (2) of course is not strictly an agreement as has been pointed out

by this Court in the case of the Port Canning and Land Improvement Co. Ltd. v. Nayan Chandra Paramanik 45 Ind. Cas. 234 : 22 C.W.N. 558 :

28 C.L.J. 87. But it really is an offer made to the tenant which the tenant can refuse or reject as he likes. Then Sub-section (3) provides that if a

raiyat on whom an agreement has been served executes it and within one month from the date of the service files it in the office from which it issued

it shall take effect from the commencement of the agricultural year next following. Sub-section (4) refers to the same agreement and provides for

notice to the landlord in the event of the agreement having been executed by the raiyat. Sub-section (5) again refers to the same agreement and

provides that if the raiyat does not execute and file the agreement under Sub-section (3) the tenant shall be deemed to have refused to execute it.

Sub-section (6) again refers to the same agreement and provides that if the raiyat refuses to execute the agreement the Court has to determine a

fair and equitable rent for the holding. Then we come to Sub-section (7) which provides that if the raiyat agrees to pay the rent determined by the

Court under Sub-section (6) he is to be entitled to remain in occupation of this holding at the rent fixed by the Court for a term of five years from

the date of the agreement. Does the word ""agreement"" in Sub-section (7) refer to the same agreement which is mentioned in the first six sub-

sections, or is it something else? It is suggested that the agreement mentioned in Sub-section (7) is the agreement arrived at between the parties

when Court has fixed a fair and equitable rent and the raiyat has agreed to pay the same. The conclusion that I have come to is this that upon a true

construction of Sub-section (7) that is the meaning of the word ""agreement"" in that section; and I have arrived at this conclusion for two reasons.

First of all, because it seems very strange that if the agreement referred to in Sub-section (3) is the same agreement as is referred to in sub. Section

(7) the agreement in one case is to take effect from the commencement of the agricultural year next following and in the other case from the date of

the agreement itself. It is certainly somewhat curious that there should be this difference in time from which the agreement is to take effect if the

agreement referred to in Sub-section (7) is the same agreement as is mentioned in Sub-section 3. The second ground is this--Sub-section (7)

provides that if a raiyat agrees to pay the enhanced rent fixed by the Court he is entitled to remain in occupation for a term of five years from the

date of the agreement. If the agreement there is to be construed as the agreement filed by the landlord under the provisions of Sub-section (2) one

might arrive at this extraordinary re suit--that a tenant would get no period of term at all if the proceedings u/s 46 had been sufficiently protracted.

In any case it seems to me that he would never get the full term of five years mentioned in the Sub-section because in this reading of the

agreement"" the time occupied in Section 46 proceedings would have to be deducted from the period of five years mentioned in Sub-section (7).

For these reasons I think upon the true construction of Sub-section (7) the word ""agreement"" therein is not the agreement mentioned in the

previous Sub-sections but the agreement arrived at between the landlord and the tenant when the Court has fixed the fair and equitable rent and

the tenant has elected to pay that rent and not to be ejected from the holding.

6. In this view, therefore, in my opinion the limitation is not saved by virtue of the provisions of Section 14 of the Limitation Act, as it cannot be

said that Section 46 proceedings are founded upon the same cause of action as the proceedings in the present suit. I do not see any other Section

of the Limitation Act under which the limitation can be saved.

7. We have been referred to various cases. The learned Judge in the Court below has relied on the case of Watson & Co. v. Dhonendra Chandra

Mukerji 3 C. 6 : 2 Ind. Jur. 209 : 1 Ind. Dec. 596. But I do not think that that case is really decisive of the question that arises in this suit. A

reference to the judgment at page 12 Page of 3 C.--[Ed.] makes it clear that the reason of that decision was that the claim in that suit was barred

by limitation on the ground that according to the decision of the Court the defendants still continued to be tenants of the zemindar under their patni

lease even though the zemindar had denied the existence of this lease. Therefore it could not be contended that the claim for rent was in suspense

during the pendency of the litigation with regard to the lease. The case that seems more nearly applicable to the facts of the present case is the

decision in Hem Chunder Choudhury v. Kali Prosanno Bhaduri 8 C.W.N. 1 : 30 I.A. 177 : 30 C. 1033 : 8 Sar. P.C.J. 529 (P.C.). Then there had

been a suit for enhancement of rent and the Judicial Committee held that the fact that a suit for enhancement of rent had been brought by the

plaintiff within the period covered by the rent suit and in. the enhancement suit the plaintiff had claimed enhanced rent for the years covered by the

rent suit stayed the operation of the Law of Limitation. Their Lordships say at page 11 Page of 8 C.W.N.--[Ed.] that the appellants claimed the

arrears of 1298 in that enhancement proceedings but this claim was then disallowed as premature; that they are not now entitled to the benefit of

the decree for enhancement and to recover the arrears of the enhanced rate. It, therefore, appears that in that case the claim in the rent suit was

expressly and exactly covered by the claim in the enhancement suit which for the reasons I have indicated is not the case here.

8. One cannot help sympathising with the position of the landlord in the present case. But in the circumstances it is clearly impossible for them to

claim rent at the old rate during the pendency of the enhancement proceeding. The result may, therefore, be that in this state of circumstances the

landlord cannot recover the full benefit of the decree for enhancement which he obtained in proceedings u/s 46 of the Bengal Tenancy Act. But that

is a question for the Legislature and not for us. We can administer the law as we find them and as we understand them.

9. In the result the appeal fails and is dismissed with costs.

Mukerji, J.

10. I agree.