(1938) 11 CAL CK 0019

Calcutta High Court

Case No: P.C. Application No. 12 of 1938

Ram Lal Dutta Sarkar		APPELLANT
	Vs	
Dhirendra Nath Roy and Others		RESPONDENT

Date of Decision: Nov. 22, 1938

Final Decision: Dismissed

Judgement

Mukherjea, J.

This is an application for leave to appeal to His Majesty in Council and is directed against a judgment of this Court passed in Second Appeal No. 1242 of 1935. The Petitioner before us was one of the Defendants in the trial Court and the suit was one commenced by the Plaintiffs landlords for recovery of rent due in respect of a tenure which is admittedly held by the Defendants under them. The Plaintiffs claimed rent at the rate of Rs. 770 a year in respect of their 5/6th share of certain lands which were let cut to the predecessors-in-interest of the Defendants as early as the year 1875 and the claim was for a period of three years only. The defence in substance was that there was dispossession by the landlords from some portion of the demised land and therefore there should be a total suspension of the rent payable by the Defendants. This contention found favour with the trial Court and it dismissed the suit in its entirety. This decision was affirmed in appeal by the Court of Appeal below. The Plaintiffs thereupon took a second appeal to this Court which was heard and decided by Mr. Justice M.C. Ghose sitting with Mr. Justice Bartley. The learned Judges held inter alia that there was really no dispossession but only a failure on the part of the landlords to put the tenant in possession of the entire demised premises and that this was acquiesced in by the tenants who paid rent inspite of the deficiency in area, at the rate stipulated in the patta for over 55 years. It was held further that the rent reserved by the lease was not a lump rental but was fixed at so much per bigha and consequently there could be no suspension of rent but the landlords would be entitled to recover rent subject to an abatement in respect of the diminished area. The learned Judges set aside the decision of the Courts below and sent the case back with a direction that the Court of Appeal below

would calculate the amount of reduced rent which the Plaintiffs were entitled to recover from the Defendants. It is against this decision that the present application has been tiled. It is not disputed before us that the order passed by this Court was a final order within the meaning of sec. 109, C.P.C. and as it reversed the decision of the Court immediately below it, it is not necessary for the Petitioner to satisfy us that there is a substantial question of law involved in this case. The controversy mainly centres round the question of valuation. It has been argued by the Petitioner who appears in person that the case satisfies the requirements of cls. 1 and 2 of sec. 110, C.P.C. and we have been invited in the last resort to grant him a certificate under sec. 109 (c), C.P.C. on the ground that the point involved is of considerable importance. In support of his contention that the present case comes within the purview of cl. (1) of see. 110, C.P. Code the applicant has relied upon the decisions in the cases of Radhakrishna Ayyar v. Sundara Swamier L.R. 49 IndAp 211: s.c. 27 C.W.N. 1 (1922) and Surapati Roy v. Ram Narayan Mukherji L.R. 50 IndAp 155: s.c. 28 C.W.N. 517 (1923). It is true, as was said by the Judicial Committee in Radhakrishna Ayyar v. Sundara Swamier L.R. 49 IndAp 211: s.c. 27 C.W.N. 1 (1922) cited above, that the sum of money actually at stake in a particular litigation may not represent its true value.

The proceeding may, in many cases, such as a suit for an instalment of rent or under a co tract, raise the entire question of the contract relations between the pa ties and that question may settled one way or the other, affect a much greater value, and its determination may govern rights and liabilities of a value beyond the limit.

2. In Surapati Roy''s case L.R. 50 IndAp 155: s.c. 28 C.W.N. 517 (1923) two rent, suits against the decisions in which the appeal was preferred were valued at a sum considerably less than Rs. 10,000. It was held by their Lordships, however, that the liability being of a recurring nature, and the property above that value, the High Court has rightly certified that the value of the subject-matter was over Rs. 10,000 as required by sec. 110 of the Code of Civil Procedure. In our opinion, this principle is of no assistance to the applicant in the present case. The decision in this case did not go to the root of the contractual relation between the parties and it did not determine the rights and liabilities of the parties on the basis of the lease for all time to come, in which case the real value of the subject-matter of the suit could be taken to be beyond its apparent value. What the Court decided in substance was that as there was failure on the part of the Plaintiffs to put the Defendants in possession of some part of the demised land, and for the period in suit, they were entitled to reduced rent corresponding to the area in actual possession of the tenant. The contention of the Defendants that there should be a total suspension of rent was negatived. But the decision, in our opinion, does not confer upon the Plaintiffs any recurring right or saddle the Defendants with any recurring liability which would hold good during the entire period of the lease and it cannot be said that we should calculate the real value of the suit at a capitalised price of the right or liability in question. It is open to the landlords to restore possession of the plots to the

Defendants at any time and if they institute a suit for recovery of rent for a subsequent period, the tenants would not be entitled to resist the claim unless they succeed in showing in the affirmative that the dispossession still continued. Nothing, therefore, relating to the entire contract, as was observed by Lord Shaw in the judgment referred to above, was actually decided in this case. The whole question was whether a certain circumstance did exist which might modify or exclude the liability of the tenants under the terms of the lease and as that circumstance may disappear at any time, the mere fact that there is possibility of future litigation in which a similar question might be raised, does not, in our opinion, bring it within the purview of the Privy Council decision mentioned above.

3. This reasoning, in our opinion, also demolishes the other argument of the Petitioner that the case could be brought under the second clause of sec. 110, C.P.C.

4. It is now well-settled that the expression "some claim or question to or respecting property," as used in the second clause of sec. 110, must be interpreted to mean" some claim or question to or respecting a property additional to or other than the actual subject-matter of dispute in the appeal." This view was taken by the Madras High Court in the case of Subramania Ayyar v. Sellammal ILR 39 Mad. 843 (1915) and this was affirmed by the Judicial Committee in the case of Gudivada Mangamma v. Maddi Mahalakshmamma L.R. 57 IndAp 56: s.c. 34 C.W.N. 235 (1929). The position, therefore, is that if the order or decree is confined in its operation to the immediate subject-matter of the suit and does not affect any claim or property outside it, cl. 1 of sec. 110 must apply and unless the conditions stated therein are fulfilled, there is no right of appeal; but if the decision does affect other rights and claims which are beyond the scope of the present suit and if the value of the latter is beyond Rs. 10,000, the second clause of sec. 110 would apply and the party would have a right of appeal. In order to have this effect it is necessary that the point which was decided in a particular case would be conclusive between the parties on certain points in subsequent suits between the same parties and it must, by the rules of res judicata or otherwise, prevent the party from reagitating any such claim or right to any property which may be involved in the subsequent litigation. As I have said above, the decision of the present case certainly does not operate as res judicata in the subsequent suit between the parties. Whether there has been a dispossession or not, depends upon the circumstance of each particular case and if any future suit for rent is started by the landlord, it would be open to him to prove and to the Defendants to disprove that the dispossession has ceased. The basis therefore upon which either suspension or abatement of rent is claimed by either side can be negatived in any subsequent suit between the parties and they will be at liberty to adduce evidence to that effect. In these circumstances, we cannot say that the decision in the subject-matter under review affects indirectly any claim or question to any property which is valued at more than Rs. 10,000 and thus satisfies the requirements of the second clause of sec. 110, C.P.C.

5. We are not also impressed with the argument of the Petitioner that we should grant him a certificate under sec. 109 (c), C.P.C. Having regard to the findings arrived at by this Court that there was really no dispossession, but an initial failure on the part of the landlord to put the tenant in possession of the entire demised property which was acquiesced in by the tenant and that the rental reserved by the lease was not a lump rental, we think that the point is well settled that the tenant in such circumstances is not entitled to claim suspension of rent and the only effect of such non-delivery of possession would be to allow the tenant proportionate reduction of rent for the area in respect of which he had not got possession. The result, therefore, is that the application for leave to appeal to His Majesty in Council is dismissed with costs, three gold mohurs.

Ghose, J.

I agree.