
(1925) 03 CAL CK 0066

Calcutta High Court

Case No: None

Rahim Sheikh

APPELLANT

Vs

Munshi Salim-ud-Din Ahammad

RESPONDENT

Date of Decision: March 31, 1925

Citation: 97 Ind. Cas. 138

Hon'ble Judges: Chakravarti, J

Bench: Single Bench

Judgement

Chakravarti, J.

This is an appeal by defendant No. 1 and arises out of a suit for rent brought by the plaintiff. The plaintiff's case was that he had purchased the interest of one Bepin from Janaka Sundari, the sole widow of Bepin that the defendants held a jama, at a rental of Be, 1-8 per year under Bepin and that the plaintiff by his purchase from the widow of Bepin was entitled to realize the rent payable by the defendants. The arrears claimed were for the years 1324 to 1327. The total amount of the claim, was Rs. 7-11-9. The defence of the defendants was that the plaintiff purchased, assuming his purchase to be true, only from one of the widows of Bepin, that there was another widow left by Bepin called Sukhada Sundari and that the plaintiff WPS, therefore, entitled to only 8 annas share of the rent and not to the 16 annas. The defendants further contended that if the plaintiff was entitled to an eight annas share of the rent the suit would be defective because all the landlords had not sued jointly.

2. The Munsif who tried the case was especially empowered u/s 153, Clause (b) to try special cases of rent of less than Rs. 50 in value. That Court held that Bepin left only one widow the plaintiff's vendor and not two widows as contended for by the defendants. In that, view there could be no defect of parties and the plaintiff would be entitled to receive 15 annas of the rent payable by the defendants and as there was no other defence established the suit was decreed in favour of the plaintiff.

3. Defendant No. 1 alone preferred an appeal to the learned District Judge who has dismissed the appeal holding that it was not competent as the suit was tried by an officer who was empowered u/s 153, Clause (b) of the Bengal Tenancy Act to try such cases.

4. As I have already stated defendant No. 1 appeals to this Court and it is contended by the learned Vakil for the appellant that the appeal before the learned District Judge was competent, because the main question raised in the trial Court was in substance a question as to whether the rent payable, to the plaintiff was the entire amount or only a moiety of it as payable to one of the two widows of Bepin.

5. It seems to me that this contention is well-founded. The 4th para, of the written statement distinctly raises the question, namely, that the rent payable to the plaintiff was not 16 annas but only 8 annas of the. entire rent. That was a question which distinctly related to the amount of rent payable by the defendants, to the plaintiff. The sole issue which was tried by the trial Court considerable length and upon the evidence in the case was as to whether the court clearly intended that any question which determines the amount of rent payable by a tenant is a question which can be agitated in appeal even against a decree of an officer specially empowered with final jurisdiction.

6. I am, therefore, of opinion that the appeal before the learned District Judge was competent and should have been entertained. In the result, I set aside the judgment and decree of the learned District judge and send the case back to him to be tried on the merits in accordance with law.

7. The appellant is entitled to his costs of this appeal. The other costs will abide the result.

8. In connection with this appeal there is an application which is not pressed.