Narendra Chandra Lahiri Vs Afifannessa Bibi and Others

Court: Calcutta High Court

Date of Decision: Jan. 13, 1915

Final Decision: Dismissed

Judgement

1. The question, raised in these appeals, is whether an application for execution of a decree obtained by a co-sharer landlord for his share of the

rent, in a suit to which the other co-sharers were not parties, the decree being for a sum of money not exceeding Rs. 500, is governed by the

special limitation provided by Art. 6 of Sch. III, of the Bengal Tenancy Act, as amended by Act I of 1908, E. B. and A. Tenancy (amendment)

Act. Under that article an application for execution of a decree made in a suit between landlord and tenant to whom the provisions of the Act are

applicable, and not being a decree for a sum of money exceeding Rs. 500, must be made within 3 years of the date of the decree. The decree in

each of these cases did not exceed Rs. 500 and was made more than 3 years before the date of application for execution, and the question

therefore is whether the decrees were made in suits between landlord and tenant, to whom the provisions of the Bengal Tenancy Act are

applicable.

2. Now, a co-sharer landlord is a landlord though he may be in separate collection of his share of the rent under an arrangement with the tenant.

The suits therefore were between landlord and tenant. Then some of the provisions of the Act are applicable to a co-sharer landlord, though not

all, so that unless it is necessary that all the provisions of the Act should apply, the cases come within the purview of Art. 6 of Sch. III of the Act. It

has however been held that it is sufficient, if some of the provisions apply.

3. The question has been considered in several cases by this Court. In Thakamani Dassi v. Mohendra Nath Dey 10 C. L. J. 463 (1909).,

Mookerjee and Vincent, JJ., held that an application for execution of such a decree obtained by a co-sharer landlord is governed by Art. 6. In a

later case, K. B. Dutt v. Gostha Behary Bhuiya 16 C. W. N. 1006 (1912)., Brett and Sharfuddin, JJ., held that the article does not apply to a

decree obtained by co-sharer landlords. The learned Judges however observed : -- "" The suit was not one brought by the present Petitioners as

co-sharer landlords under the provisions of sec. 148A or 158B of the Bengal Tenancy Act, and in such circumstances, the decree which they

obtained was a simple money-decree, and so far as we can ascertain from the materials before us, there is nothing to indicate that, in that decree,

the Petitioners invoked the application of the provisions of any section of the Tenancy Act. In our opinion, the present case is distinguishable from

the case of Thakamani Dassi v. Mohendra Nath Dey 10 C. L. J. 463 (1900)., on which the lower Courts relied, so that, even if we were prepared

to follow the decision in that case, as to which it is not necessary for us in this case to express any opinion, it would not, in our opinion, be

applicable to the facts of the present case"". The distinction relied upon apparently was that in the earlier case two provisions of the Act were

applied for the benefit of the landlord, viz., that a decree for damages was made at the full rate mentioned in sec. 68, and Art. 2, cl. (b), of Sch. III,

was applied to enable the landlord to obtain a decree for rent for four years, whereas if the provisions of the Act were inapplicable, he could have

obtained a decree for rent only for 3 years, and interest only at the contract rate. In the present cases also, it appears that damages at the full rate

mentioned in sec. 68 were awarded in some of the suits, and some of the suits were decreed for rents for four years. So the distinction relied upon

by Brett, J., exists in these cases also.

4. Mr. K. B. Dutt''s case 16 C. W. N. 1006 (1912) has not been followed in subsequent cases. In Khetro Mohan Chatterjee v. Mohim Chandra

Das 17 C. W. N. 518 (1913), Carnduff and Beachcroft, JJ., said that they were disposed to follow the views expressed in Thakamani Dassi v.

Mohendra Nath Dey 10 C. L. J. 463 (1909), rather than the later ruling of Brett and Sharfuddin, JJ., in K. B. Dutt v. Gostho Behary 16 C. W. N.

1006 (1912). In a still later case [Mrityunjoy v. Bholanath 18 C. L. J. 81 (1913)], Mookerjee and Beachcroft, JJ., declined to follow K. B. Dutt''s

case 16 C. W. N. 1006 (1912) and pointed out that, that case overlooks the fundamental fact, that Art. 6 is applicable where the decree has been

made in a suit between landlord and tenant to whom (and not "" to which "") the provisions of the Act are applicable. They observed : "" The vital

point to determine, consequently, is, whether the provisions of the Act are applicable to the landlord and tenant between whom the suit has been

instituted : it is immaterial that all the provisions of the Act are not applicable to the suit"", and following Thakamani''s case 10 C. L. J. 463 (1909).

held that the decree was barred by limitation. Again, in Appeal from Order No. 562 of 1912 (edcided on the 26th January 1914), K. B. Dutt''s

case 16 C. W. N. 1006 (1912) was not followed and the view taken in Thakamani Dassi v. Mohendra Nath Dey 10 C. L. J. 463 (1909). and

Mrityunjoy v. Bholanath 18 C. L. J. 81 (1913) referred to above was accepted as correct. In Kedar Nath Banerjee v. Ardha Chandra Roy I. L.

R. 29 Cal. 54 (1901), Banerjee, J., in discussing Art. 6 of the Act, as it stood before the amendment, pointed out that the Article speaks not of

decrees for rent, nor of decrees in suits between landlord and tenant, but of decrees made under the Act. In the Article as amended, the words are

decree or order made in a suit between landlord and tenant to whom the provisions of this Act are applicable We are of opinion that the Article

as amended applies to the decrees in the present cases. The appeals must accordingly be dismissed.