(1913) 07 CAL CK 0036

Calcutta High Court

Case No: Appeal from Order No. 271 of 1912

Dwarka Dhakai		APPELLANT
	Vs	
Mathur Lal Majumdar and another		RESPONDENT

Date of Decision: July 8, 1913

Final Decision: Allowed

Judgement

Coxe, J.

The Plaintiff in this case is a co-sharer landlord, and his case is that the tenants bad executed a kabuliyat in favour of the 16 annas landlords agreeing to pay rent for 15 bighas of land. There was a stipulation that the tenant should pay additional rent for additional land. Accordingly the land was measured and was discovered to be 25 bighas instead of 15 bighas. He, therefore, sued for the whole rent, including the rent due on the additional area making his co-sharers parties to the suit. The Munsif held that the suit was not maintainable under sec. 188 of the Bengal Tenancy Act. This decision was set aside in appeal by the additional Subordinate Judge, and the Defendant appeals. It appears to me that the point is concluded by authority. The decisions in Gopal Chandra v. Umesh Narain I. L. R. 17 Cal. 695 (1890) and Baidya Naih v. Ilim 2 C. W. N. 441 ; s. c. I. L. R. 25 Cal. 917 (1897) are both clear authorities that a suit of this nature can only be brought by all the landlords under sec. 188 of the Bengal Tenancy Act ; and it was held in Jatindra Nath v. Prasanna Kumar 15 C. W. N. 74 (1910) that when a suit must be brought by the whole body of landlords under sec. 188, it is not sufficient if the co-sharers who are unwilling to join as Plaintiffs are joined as Defendants. It appears to us, therefore, that so far as the claim for increased rent is concerned, we are bound by these decisions to hold that the suit is barred by sec. 188 of the Bengal Tenancy Act.

2. It has been argued, firstly, that sec. 52 only applies to cases in which the area in excess for which rent had been previously paid is included within the original holding, and that the section does not apply to cases in which new land has been taken. It appears to me that this is an impossible construction of the plain terms of

the section.

3. Secondly, it has been argued that this is not a suit under the Bengal Tenancy Act at all, inasmuch as there is a separate kabuliyat between the parties ; and reference has been made to the case of Gobinda Chandra v. Hamidulla 7 C. W. N. 670 (1903), in which it was held by Prinsep, J., agreeing with Ghosh, J. (Geidt, J., dissenting) that in the circumstances of that case sec. 188 did not bar the suit. But that case may be distinguished on the ground that there was an entirely separate agreement between the tenant and the individual co-sharer landlord who was the Plaintiff which does not exist in this case. The case of Baidya Nath v. Ilim 2 C. W. N. 44 : s. c. I. L. R. 25 Cal. 917 (1897) to which I have already referred shows that the existence of an agreement does not necessarily take the suit out of the Tenancy Act, and it appears to me that it would be unreasonable 10 hold that it should. It is provided by the Tenancy Act and it must be common knowledge, that a tenant is bound to pay additional rent for additional land and is entitled to reduction of rent if the area is reduced. If the landlord and tenant include a stipulation to that effect in their contract, it certainly seems to me unreasonable that the existence of such a stipulation should oust the application of the Tenancy Act from which it was in all probability derived. Reference has been made to another case, namely, that of Dintarini v. Broughton 3 C. W. N. 225 (1896), but that case is clearly distinguishable, because there the liability of the Defendant was said to have come into existence before the passing of the Bengal Tenancy Act. It appears to me now clearly settled that a suit of this nature must be brought by the whole body of landlords, and that accordingly so far as that point is concerned, the appeal must be allowed and the decision of the Subordinate Judge set aside. This decision, however, does not take away the right of the Plaintiff to the original rent which has accrued due during the years in suit, and the case must accordingly go back to the Court of first instance in order that that Court may decide how much of that rent is due and unpaid. The Appellant will be entitled to his costs in this Court and of the Court below. The hearing fee is assessed at two gold mohurs.

Ray, J.

I agree.