(1917) 03 CAL CK 0031

Calcutta High Court

Case No: None

Kusum Kumari Debi and Others		APPELLANT
	Vs	
Surendra Krishna Ghose and Others		RESPONDENT

Date of Decision: March 23, 1917

Citation: 42 Ind. Cas. 455

Hon'ble Judges: Smither, J; Fletcher, J

Bench: Division Bench

Judgement

Fletcher, J.

This is an appeal by the defendant against an order of the learned Subordinate Judge Of Nadia, dated the 23rd June 1915, reversing an order of the Munsif of Krishnanagar. The original plaintiff, who bore the following description "K. P. Ghose, Property Improvement Association, Limited, His Liquidators" whether the word "His" represents K. P. Ghose or Association, I do not know Surendra Krishna Ghose, Rajendra Krishna Ghose, sons of Kali Prasunna Ghose, by caste Kayestha, by occupation zemindars" brought the suit to recover rent. The learned Munsif held that K.P. Ghose, Property Improvement Association, Limited, His Liquidators" were not entitled to recover the rent sued for and therefore, dismissed the suit although he also expressed the opinion that the defendant had paid the rent that was due in respect of the holding. The plaintiffs then appealed to the Court of the learned Subordinate Judge and the learned Subordinate Judge came to the conclusion that if "K. P. Ghose, Property Improvement Association Limited, His Liquidators" were not the proper plaint-Ma, one of the liquidators, Surendra Krishna Ghose, had become entitled to the property and that; therefore, leave to amend the plaint by striking out the names of the association and the other liquidator and allow the suit to proceed as a suit brought by Surendra Krishna Ghose, one of the persons described as liquidators in the plaint, ought to be granted. Against that order, the present appeal has been preferred.

2. I am not at all satisfied that an appeal lies, to this Court in a matter of this nature. But assuming that an appeal lies. I am not inclined to interfere with the order of the lower Appellate Court The learned Munsif was clearly wrong in holding that when the Company went into voluntary liquidation, it was dissolved There is nothing left to liquidate if a corporation becomes dissolved at the commencement of either a Voluntary winding-up or a compulsory one. The fact is that K. P. Ghose, Property Improvement Association, Limited, consisted of, a Hindu family that incorporate themselves under the provisions of the Indian Companies Act and having incorporated themselves under the provisions of the Indian Companies Act, they had the usual proceedings of a partition and apparently they had first to get rid of the company. Bat whether they got rid of the company or not, we are not called upon to consider. All that the learned Judge has found in this case is that Surendra himself stated in a certain partition proceeding between the members of the company that he became entitled to a portion of the property of the company. The mere fact that, acting under the advice, right or wrong, that a suit could be maintained in the name of the Company and its liquidators in respect of the rent that accrued due before liquidation, the present plaintiff brought the suit in the form in which it was instituted, ought not to deprive him of any right that be has to receive the rent. The decision of the learned Subordinate Judge is manifestly a correct decision. This defendant does" not only object bat she also says that she maybe prejudiced if the name of K. P. Ghose, Property Improvement Association, Limited, His Liquidators, be altered to the mere simple name of Surendra Krishna Ghose. If her statement is true that she has, in fact, paid her rent, I suppose she will be equally able to give evidence that, she has paid the rent in the suit in which Surendra is the plaintiff as in the suit where the Company is stated to be the plaintiff. The course adopted by the learned Judge of the lower Appellate Court seems to be manifestly the right course, namely, that a person entitled to his rent should not be deprived of his rent merely by the error of the gentleman who advised him that a suit in the form in this case could be maintained. In that view, though no an peal lies to this Court, I think we ought to affirm the learned Subordinate Judge"s decision and dismiss the appeal with costs, three gold mohurs.

Smither, J.

3. I agree.