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Choa Lall Mondal and Another Vs Maharajah Sir Rameswar Singh Bahadur

None

Court: Calcutta High Court

Date of Decision: Dec. 2, 1909

Judgement

No. 1403.

1. This is an appeal against an order of the Special Judge of Bhagalpore in a case instituted before the Assistant Settlement Officer of Madhepura

u/s 105 of the Bengal Tenancy Act. The present respondent, the Maharaja of Durbhanga, applied under the provisions of Section 105 of the

Bengal Tenancy Act to have the rents of the defendants tenancy settled. The matter went before the Assistant Settlement Officer who took

evidence and the evidence appears to have been concluded in September 1905, and the 17th October 1905 seems to have been fixed for the

delivery of judgment. On the 29th September a notice was issued by the Settlement Officer on the defendant stating that it was necessary for him

to come for the purpose of considering certain points and directing him to appear on the 27th September 1905. On the 27th September 1905, a

petition was put in on behalf of the Maharaja which purported to have been accepted by the tenant to the effect that both parties would accept

whatever rent the Courts would settle as fair and equitable and that no objection would be raised in future. Thereafter the judgment was delivered

on the 18th October by the Assistant Settlement Officer. The rent at which the defendant was holding his lands prior to the application appears to

have beer Rs. 33-6-6 for 66 bighas, 16 cottahs of land. The Maharaja in his application stated that the area was 73 bighas, 2 cottahs, 6 dhoors,

and he claimed rent for all these lands at the uniform rate of Rs. 2-2 per bigha making a total of Rs. 155-6. The Assistant Settlement Officer found

that the total amount of land was 69 bighas, 9 cottahs, 6 dhoors, and he fixed the rent at Rs. 102 for the whole holding. He determined that the fair

rent for khamar lands was Rs. 2 per bigha and for chit lands Rs. 1-4 per 6 bighas. Both parties appealed to the Special Judge and that officer

disposed of the appeal on the 13th June 1903. The result of the findings in the judgment of the Special Judge appears to be that he gave the

plaintiff a decree for enhanced rent at the full rate claimed. The defendant has appealed to this Court.

2. In support of the appeal two points have been taken. The first is that the lower appellate Court has erred in the manner in which it has decided

the question how far the defendant was benefited in the suit by the provisions of Section 50 of the Bengal Tenancy Act and secondly, that the

Special Judge has allowed the plaintiff enhanced rent at the full rates claimed without giving any reason whatever for the conclusion or explaining

why he differed from the finding of the Settlement Officer as to the rates of rent. We have heard the learned pleaders on bath sides and we are of

opinion that these contentions are sound.

3. A preliminary objection to this second appeal was taken on the ground that as the proceeding was one u/s 105 of the Bengal Tenancy Act, the

appellant was precluded from presenting a second appeal to this Court by the provisions of Section 109A Clause 3 of the same Act. The tenant,

no doubt took the defence that he was protected from enhancement by the provisions of Section 50 of the Bengal Tenancy Act, but he failed to

ask that the question should be taken up in a proceeding, u/s 106 of the Act, as he ought to have done. We find, however, that that point has been

expressly decided by a full Bench of this Court in the case of Pirthi Chand Lal v. Shiekh Basarat Ali 3 Ind. Cas. 449 : 13 C.W.N. 1149 : 10

C.L.J. 343. It was held in that case that the tenant was entitled, even though the proceeding was taken u/s 105 of the Bengal Tenancy Act, to a

second appeal provided that in that proceeding questions were raised and decided which properly come, under the provisions of Section 106 of

the Bengal Tenancy Act. In this case the defendant raised the objection that he was a tenant holding at fixed rate and as that question involved the

determination of his status as a tenant, which is a question coming under the provisions of Section 106, clearly an appeal lies to this Court from a

decision of the Special Judge.

4. The judgment of the learned Special Judge, in determining how far the defendant was benefited by the provisions of Section 50 of, the Bengal

Tenancy Act is not very clear but it has been contended on behalf of the respondent that the Judge has really allowed to the defendant the benefit

of that section but has come to the conclusion that the presumption raised by that section has been rebutted. The learned pleader argues that the

Judge has found that the presumption is rebutted,(1) by the conduct of the tenant who never would have agreed to accept the decision of the

Assistant Settlement Officer if he had been a tenant at a fixed rent, (2) by the fact that when he was recorded as a raiyat with rights of occupancy,

the tenant if he had permanent rights, would certainly have put in an application u/s 106 of the Bengal Tenancy Act to have the entry altered which

he did not do, (3) because the Judge did not believe the defendant when he alleged that he was entitled to hold at admittedly low rates and (4) by

the fact that in his ground of appeal to the lower appellate Court the defendant never raised the point.

5. For the appellant, it has been argued that the lower appellate Court has erred in law in holding that the presumption raised by Section 50 of the

Bengal Tenancy Act could be rebutted in the manner in which it held that it had been rebutted. That section provides: ""If it is proved in any suit or

other proceeding under this Act that either a tenure-holder or raiyat and his predecessor-in-interest have held at a rent or rate of rent which has not

been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed until the contrary is shown

that they have held at that rent or rate of rent from the time of the permanent settlement"". It is contended that the words until the contrary is shown

in that section cannot be interpreted to cover any of the methods by which the learned Judge has found that the presumption has been rebutted.

The section means that either it must be shown that the rate had been raised at sometime after the creation of the tenancy and prior to the suit or

that the tenancy was created after the time of the permanent settlement. We think that this contention is sound and that the learned Judge has erred

in the view which he has taken that the presumption raised u/s 50 of the Bengal Tenancy Act has been rebutted. We are, therefore, of opinion that

the first ground taken in support of this appeal must succeed.

6. As regards the second point, we are also of opinion that it is sound, The learned Judge says in his judgment: ""I allow the rates claimed by him,

that is to say, the plaintiff but I am not prepared to differ from the Assistant Settlement Officer"s classification of the lands. If he accepted the rates

claimed by the landlord in his plaint which was one rate for all the lands, it was not necessary for him to add that he accepted the classification of

the Assistant Settlement Officer. In fact that classification would, after he had accepted the single rate claimed by the landlord, have no possible

effect."" We are of opinion that the finding of the District Judge on that point cannot be accepted as it seems to have arrived at without any

consideration of the evidence and without giving any reasons for differing from the findings of the Assistant Settlement Officer. The second point

taken must, therefore, also succeed.

7. The question then arises whether this case should be sent back to the lower appellate Court for rehearing or whether it should be sent back to

the Court of first instance. We are of opinion that the latter is the proper course to follow and for the following reason: The Settlement Officer

appears in this case to have, in settling the rents, assumed the position of arbitrator between the parties. He could not have acted in that capacity

under the provisions of the CPC and the only section which would enable him to act in that capacity is Clause (5) of Section 105 of the Bengal

Tenancy Act. That clause provides: ""The Revenue Officer may in any case under this section propose to the parties such rents as he considers fair

and equitable and the rents so proposed, if accepted orally or in writing by the parties, may be recorded as the fair rents."" In this case the Revenue

Officer does not appear to have followed the procedure provided by the Act. He called on the defendant to appear and when he appeared, his

consent was taken to accept whatever rent the Court would settle as fair and equitable. The Settlement Officer did not state what rents he

proposed as fair and equitable. We think, therefore, that the proceedings of the Settlement Officer were not in accordance with law in determining

the fair and equitable rents in the present case and we, therefore, set aside the findings and decrees of both the lower Courts. The case must be

sent back to be proceeded with according to law. The result, therefore, is that we decree the appeal, set aside the judgments and decrees of bath

the lower Courts, and direct that the case be sent back to be proceeded with according to law Costs will abide the result. We fix the hearing fee at

five gold mohurs for both appeals.

No. 1784.

8. The judgment that we have just delivered will govern this case also.

Applications Nos. 3340 and 3341:

9. These applications are refused.