(1925) 12 CAL CK 0061

Calcutta High Court

Case No: None

Biseswar Sarkar		APPELLANT
	Vs	
Kali Charan Ash and Others		RESPONDENT

Date of Decision: Dec. 2, 1925

Citation: 94 Ind. Cas. 418

Hon'ble Judges: Cuming, J; B.B. Ghose, J

Bench: Division Bench

Judgement

B.B. Ghose, J.
These three appeals arise out of three suits for rent. The plea of the defendants mainly was that the plaintiffs having dispossessed them from certain portions of their holdings they were entitled to have the entire rent suspended for the years in suit.

2. There were previous suits for rent in 1915 for these very holdings. It appears that the defendants in those cases also raised the plea that they had been dispossessed of those very lands which are now in dispute and consequently there should be suspension of rent. The question of suspension of rent was decided against the defendants and it was found in those cases that there had been no dispossession by the landlords.

3. The learned Munsif held that the question of suspension of the rent was res judicata. He also held upon the facts that it was not satisfactorily proved that the defendants had been dispossessed from any of the lands. Upon that finding the Munsif passed a decree for the entire amount claimed by the plaintiffs. On appeal by the defendants the learned Judge approached the question of res judicata from the point of view as to whether the defendants were entitled to a proportionate reduction of rent on account of dispossession from portions of the holdings. His view was, following the case of Nil Madhab Sarkar v. Brojo Nath Singha 21 C. 236 : 10 Ind. Dec. 789, that the question of the amount of rent payable for a particular period in a suit for rent cannot be held to be res judicata on account of a previous

decision as to the amount of rent for a different period. The learned Judge then proceeded to apportion the rent in a certain proportion.

4. Defendant No. 1 appeals to this Court and his contention is that the whole of the rent should be suspended with regard to these jamas.

5. The decision of the lower Appellate Court on the question of res judicata considered from the point of view taken may be right. But he did not approach the question of res judicata with regard to the plea of suspension of rent on account of the dispossession alleged by the defendants to have occurred before the previous suits for rent in the year 1915. The learned Judge also does not mention in his judgment what were the issues in those rent suits. As the Munsif has pointed out the question of suspension of rent on account of dispossession was distinctly raised in those previous suits. As the decisions in the previous suits are not before us and we are not aware what the issues were in the previous rent suits it is not possible to say whether the decisions in the previous rent suits operated as res judicata with regard to the question of suspension of rent. For the purpose of the present appeal it may be taken that this question was not res judicata. It appears, however, from the judgment of the learned Judge that the question of suspension of rent was not taken before him at all But the statement of the learned Advocate for the appellants may be accepted that this question was raised before the District Judge.

6. Taking now the facts found by the District Judge on which the suspension of rent is claimed it will be observed that the learned Judge has found that the defendants were dispossessed of two plots measuring 2 1/3 bighas and 2 bighas out of 87 bighas of land and of one plot of 2 3/4 bighas out of an area of 150 bighas of land by the plaintiffs by accepting kabuliyats from different tenants with regard to these small portions of land. The learned Judge does not say distinctly under what circumstances these kabuliyats were taken by the plaintiffs. But it has been found by the Munsif on the admission of the defendants'' gomashta that these plots of land were sold as appertaining to some other jamas belonging to these defendants in a suit for rent brought by the plaintiffs for those other jamas. It would thus appear that this dispossession took place by virtue of a decree of a Court against these very defendants under which these plots were sold as appertaining to some other jamas.

7. It is true the rule of suspension of rent on account of eviction by the landlord of the tenant from a portion of the demised premises has been adopted in this Court in a series of cases and it is too late to question the adoption of that rule in our Court now. But the facts necessary to cause suspension of rent on account of an alleged eviction by the landlord must be distinctly found in order to bring into operation this rule which has been applied as a punishment to the landlord for his illegal acts. It is unnecessary for me to state in detail what findings are necessary to support the proposition that the entire rent should be suspended for the eviction of a tenant from any part of the demised premises, however, small it may be. The facts which would bring into operation the rule may be found in the observations made in

the case of Upton v. Townend (1855) 17 C.B. 30 at p. 64 : 25 L.J.C.P. 44 : 1 Jur. 1089 : 139 E.R 976 : 104 B.R. 562 by Jervis, C.J., which has been quoted and followed in the case of Dhunput Singh v. Mahomed Kazim Ispahain 24 C. 296 : 12 Ind. Dec. (N.S.) 864 which may be considered as the leading case on the subject in our Court. Jervis, C.J., states what the modern meaning of the word eviction is. He says it is "not a mere trespass and nothing more, but something of a grave and permanent character done by the landlord with the intention of depriving the tenant of enjoyment of the demised premises". Then he goes on to observe. "If that may in law amount to an eviction, the Jury would very naturally cut the knot by finding whether or not the act done by the landlord is of that character and done with that intention". In all the cases in our Court where suspension of rent has been allowed on this ground it has been found that the landlord had done such an act with the intention of depriving the tenant of the enjoyment of the demised premises. Or as I have already stated it is a punishment awarded to the landlord for his illegal act or highhandedness. In the present case there is no such finding. The facts only amount to this that in a previous rent suit against these very defendants a portion of the land appertaining to these jamas in question were included in the decree for rent of the other jamas and sold along with other lands. It was open to the defendants in that case to point out that the lands now in question did not appertain to the other jamas. They refrained from doing so. It must be either through inadvertence or for some other cause that the lands which have been found now to appertain to the jamas in suit was stated as appertaining to some other jamas. That can hardly be construed as an act done by the landlord with the intention of depriving the tenants of the enjoyment of the demised premises. It has not been so found by the learned Judge who considered it to be only a case of apportionment. It seems to me that as the rule of law as regards suspension of rent has been introduced in this country as a rule of equity, justice and good conscience, or as it is said in some of the cases a rule of policy, we must look to the circumstances of each case in order to apply that rule. Having regard to the fact that the defendants have been deprived under the circumstances stated above of only a very small fraction of the land comprised within their jamas as equitable decision seems to have been arrived at by the learned Judge by apportioning the rent in the proportion he has done, that is deducting the rent of 2 bighas and 2 1/2 bighas out of 87 bighas and of 2 3/4 bighas out of 150 bighas of the holdings. Otherwise it would have the effect of making the defendants practically the owners of the properties as they would be entitled to hold the lands in perpetuity without paying any rent whatsoever.

8. On these grounds I am of opinion that the appeals should be dismissed with costs.

Cuming, J.

9. I agree.