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(1880) 04 CAL CK 0015

Calcutta High Court

Case No: None

Ramnidhee Manjee

APPELLANT

Vs

Parbutty Dassee

RESPONDENT

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Date of Decision: April 12, 1880

Citation: (1880) ILR (Cal) 823

Hon'ble Judges: White, J; Maclean, J

Bench: Division Bench

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Judgement

White, J.

This suit was brought by a lady, Parbutty Dassee (the respondent before us), for khas possession of certain land or for obtaining a kabuliat by assessment of rent at a rate on that land.

2. The land appears to be land which has become annexed by gradual accretion to a jote in the occupation of the defendant (the appellant before us). The precise nature of the defendant's tenure does not appear, but it seems to have been accepted in the case that he held a tenure under the plaintiff of a permanent character. The land accreted gradually, and I am of opinion that the accretion was annexed to the jote of the defendant, but liable to the payment of rent to the plaintiff on its being shown that he (the defendant) was, in the language of Reg. XI of 1825, by his engagement with the plaintiff or her predecessors, or by established usage, subject to an increase of rent for the land so annexed.

3. The first objection taken by the defendant is, that he was not duly served with notice, and an issue was raised by the Munsif upon that point. The Munsif was of opinion that service of notice had not been proved, but that having regard to the nature of the suit, no notice was necessary.

4. The lower Appellate Court on this point remarked: "I think that this case does not come under the Rent Procedure Act, Beng. Act VIII of 1869. The plaint is sufficient notice of demand of khas possession or for kabiats."

5. Now, looking to the nature of the case and to the fact that this land had accreted gradually and had become annexed to the land which was in the occupation of the defendant, I think that the right to recover increased rent in respect of the accretion is a right outside the Rent Procedure Act, and one that must be based upon the provisions of Reg. XI of 1825, Section 4. At the same time there is a clause in the Rent Act (Beng. Act VIII of 1869), which has been held by this Court to be of general application whenever a superior landholder seeks to make an under-tenant pay an increased amount of rent. It is Section 14, which prescribes that no under-tenant or ryot shall be liable to pay any higher rent for the land that he holds than the rent payable for the previous year, unless a written notice is served upon him by order of the Collector in whose district the land is situate, at a particular specified time, stating the rent to which he will be subject for the ensuing year and the ground on which an enhancement of rent is claimed. I need only refer to one decision of this Court,--namely, the case of Bakranath Mandal v. Benodhram Sein (1 B.L.R. F.B. 25).

6. The notice in the present case is described in the plaint as a notice requiring the defendant to quit the land or take out a settlement at a proper rate of rent, and is alleged to have been served by the plaintiff on the defendant: such service was not in accordance with Section 14 of the Rent Act, and it is undisputed that the notice did not contain the particulars required by that section. That being so, the plaintiff's suit must be dismissed with costs.

7. This Judgment will govern appeals Nos. 772 and 773.

8. The appeals are allowed with costs, and the respondent will pay to the respective appellants their costs in the lower Appellate Court.

Macleay, J.

9. I am of opinion that the defendant is entitled to hold the land which has been added to his jote by accretion as part of his jote, subject, however, to increased rent on account of the accretion on the conditions laid down in Reg. XI of 1825, Section 4, Clause 1. But before increased rent can be imposed a notice must be served upon the defendant, informing him of the amount of rent to be imposed and the grounds upon which it is claimed. In this case a demand for possession or a kabuliati at fair and equitable rate is made, but it only refers to the additional land, and does not mention the amount of rent. The suit is therefore badly framed, and I concur in dismissing the suit.