

(1881) 02 CAL CK 0023

Calcutta High Court

Case No: None

Panchu Mohini Debya

APPELLANT

Vs

Taruck Chunder
Mookerjee

RESPONDENT

Date of Decision: Feb. 17, 1881

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 43

Citation: (1881) ILR (Cal) 791

Hon'ble Judges: Pontifex, J; McDonell, J

Bench: Division Bench

Judgement

Pontifex, J.

In April 1878, rent being due from the defendant to the plaintiff for the years 1281, 1282, and 1283, the plaintiff instituted a suit for the rent of 1281, for which she obtained a decree.

2. Although that suit was instituted after Act X of 1877 came into force, the plaintiff did not include in her suit the rents for 1282 and 1283, which were also then due.

3. In April 1879, the plaintiff instituted the present suit for the rents of 1282, 1283, and 1284. With respect to the rents of 1284, it appears from the judgments of the Courts below that, at the time of the institution of the former suit, the year 1284 had not expired, and therefore the entire rent for that year had not become due. The present suit would, therefore, lie for the rent of 1284.

4. But objection was taken by the defendant to the suit so far as it related to the rents of 1282 and 1283, on the ground, that they should have been included in the former suit in accordance with the provisions of Section 43 of Act X of 1877.

5. Now it was decided in Raja Sutto Churn Ghosal v. Obhoy Nund Doss (2 W. R. Act X Rul. 31), that a separate suit would lie for the rents of each year, and that decision

became the foundation of two other decisions by this Court---in *Ram Soonder Sein v. Krishno Chunder Gupto* (17 W. R. 380) and *Kristo Kinkur Pormanick v. Ram Dhun Chettangia* (24 W. R. 326).

6. Speaking for myself, I do not consider that the reasons given in the decision of *Raja Sutto Churn Ghosal v. Obhoy Nund Doss* (2 W. R. Act X Rul. 31) are satisfactory; and I should have been reluctant to be bound by it. But Section 43 of Act X of 1877, with the illustration thereto, is a direct legislative reversal of that decision. Now, so far as the Court is concerned, that decision,, with the two other cases founded on it, had established a procedure which, until Act X of 1877 came into operation, would have been a sufficient authority for the course pursued by the plaintiff in her suit No. 467 of 1878. But a different procedure having been ordained by Section 43 of Act X of 1877, which came into force on the 1st of October 1877, the authority of the three cases referred to has, in my opinion, been swept away.

7. It is true the illustration to Section 43 represents only the exact state of circumstances which existed in the case of *Raja Sutto Churn Ghosal v. Obhoy Nund Dass* (2 W. R., Act X Rul., 31), and it would have been clear if the illustration had been general and not confined to the peculiar circumstances of that case. But it was certainly intended to reverse the decision of *Baja Sutto Churn Ghosal v. Obhoy Nund Doss* (2 W. R., Act X Rul., 31), and with it the entire foundation of the decisions in the two other cases likewise fails. In my opinion, there can be no reason to distinguish between a suit omitting to claim an earlier rent and a suit omitting to claim a later rent which is due at the-date of its institution. The illustration certainly treats a claim to all arrears of rent as a single cause of action.

8. I am unable, therefore, to agree with the interpretation which the learned Judge in the Court below has placed on Section 43 of Act X of 1877, and I am of opinion that the plaintiff was bound by that section to claim in her suit of 1878 the rents of the years 1282 and 1283, and that, having failed to do so, her present suit does not lie for these rents. The decrees of the Courts below will, therefore, be reversed so far as relates to the rents of 1282 and 1283, and will be affirmed so far as relates to the rent of 1284.

9. This being a case of a defaulting lessor, we think there should be no costs either in this or in the lower Courts.