
(1907) 12 BOM CK 0018

Bombay High Court

Case No: None

Raja Pramada Nath Roy

APPELLANT

Vs

Raja Ramani Kanta Roy

RESPONDENT

Date of Decision: Dec. 11, 1907

Citation: (1908) 10 BOMLR 66

Hon'ble Judges: Robertson, J; Collins, J; Arthur Wilson, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Arthur Wilson, J.

This appeal raises a question upon the construction and effect of the Bengal Tenancy Act, a short question, but one which may be of considerable importance wherever that Act applies.

2. The facts of the case are not in dispute, and are simple. In the year 1837 the then owner of the zemindari interest in an 8 annas share in Dihi Haloti created a putni tenure in those 8 annas in favour of one Abbott, at a rent reserved. The zemindari and the putni interests both underwent subsequent devolutions, and at the "time which is now" material, the present plaintis (appellant) held 6 annas of the zemindari interest, respondents 14 and 15 held one anna, and respondents 2, 3, and 16 one anna. The putni aterest was held by the remaining respondents, and also by respondent 16. The last-mentioned, therefore, was interested both in the zemindari and in the putni. The putni rent fell into arrear so far as the share which should have come to the appellant was concerned.

3. The appellant thereupon brought the present suit on the 17th April 1900 in the Court of the Subordinate Judge of Rajshahye. He made the putnidars defendants, and he joined as co-defendants his co-sharers in the zemindari on the ground that they refused to join him as plaintiffs. The suit was framed as one under the Bengal Tenancy Act to recover the whole rent of the tenure, and for that purpose to bring to

sale the tenure itself. But the plaintiff asked in the alternative for a decree for the plaintiff's share of the rent.

4. The Subordinate Judge refused to make a decree under the Bengal Tenancy Act for the whole putni rent, and gave a decree only for the plaintiff's share of the rent. On appeal, the case came before two Judges of the High Court, Ghose and Geidt JJ., who differed in opinion, Ghose J. holding that the view of the Subordinate Judge was correct, Geidt J. being of the contrary-opinion. In consequence of this difference the case was referred to a third Judge. Brett J., who agreed with Ghose J., with the result that the appeal was dismissed. Against that decision the present appeal has been brought, and it lies upon their Lordships to determine which of the views taken by the learned Judges ought to prevail.

5. Section 65 of the Bengal Tenancy Act enacts that:-

Where a tenant is a permanent tenure holder...he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

6. Section 159 and the following sections provide the means and procedure for so bringing the tenure to sale, and for the cancellation of incumbrances thereupon. The only other section which it is necessary to refer to is Section 188, which says that :-

Where two or more persons are joint landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to action behalf of both or all of them.

7. By the express terms of the Bengal Tenancy Act, in the event of rent being unpaid, the owners of the zemindari interest are entitled, by suit under that Act, to bring a putni to sale, with the consequences prescribed by the Act. And it is a general rule-a rule not derived from the Bengal Tenancy Act, but from quite another branch of law, namely, the general principles of legal procedure-that a sharer, whose co-sharers refuse to join him as plaintiffs, can bring them into the suit as defendants, and sue for the whole rent of the tenure. This must apparently be the law applicable to the present case, unless there be something to exclude the case from the operation of these general rules.

8. For the purpose of this exclusion, what was relied on was this: it was said that, by express or implied agreement between the zemindars and the putnidars, the shares in the putni rent of the several zemindars were to be paid, and so far as they were paid at all, were, in fact, paid separately; and it was contended that that agreement, on the one hand, entitled the separate zemindars to sue for their separate shares, and to bring to sale the right, title, and interest of the putnidars, but on the other hand, either precluded the zemindars altogether from obtaining a decree under the

Bengal Tenancy Act for the rent as a whole, or at any rate prevented one of the zemindars from doing so by making his co-sharers defendants.

9. This was the contention which prevailed with the Subordinate Judge and with two out of the three Judges in the High Court.

10. The evidence of the alleged agreement consisted of certain decrees, which seemed to show that the shares of the rent had been from time to time separately recovered. It has long been held in Bengal that agreement, either expressly proved or implied by the conduct of the parties, may establish the right to sue separately for the shares of rent receivable by the separate share-holders; and their Lordships have no inclination to question that course of rulings.

11. But it has been equally clearly laid down in Bengal that such an arrangement, expressed or implied, merely affects the right to sue separately for rent, and in no other respect modifies the terms of the holding; and their lordships think that this is clearly a sound view of the law. And it appears to their Lordships to be sufficient ground upon which to decide this appeal, for it follows, from the propositions referred to, that the right to bring the tenure to sale for arrears of rent remains intact, and also the right of one sharer to sue, making his co-sharer defendants when they will not join as plaintiffs.

12. It only remains to notice Section 188 cited above. It was suggested in argument that this section precludes a suit under the Act, for the aggregate rent of the tenure, unless all those entitled to share in the rent join as plaintiffs. Their Lordships are not impressed by this argument. The filing of a suit is not a thing which the landlord is, under the Act, required or authorised to do. It is an application to the Court for relief against an alleged grievance, which the plaintiff is entitled to submit, not by reason of any provision of the Tenancy Act, but under the general law.

13. Their Lordships will humbly advise His Majesty that this appeal should be allowed, that the decrees of both Courts in India should be discharged, and that instead thereof it ought to be declared that the appellant is competent to bring a suit under the Bengal Tenancy Act, for the whole rent due in respect of the property in suit, that the case ought to be remitted to the High Court to take the necessary steps for the disposal thereof on the footing of the above declaration, and that the respondents who defended the appeal to the High Court ought to pay the costs thereof, and that the costs in the Court of the Subordinate Judge ought to be dealt with by that Judge on the above footing.

14. The respondents who defended this appeal will pay the costs of it.