

(1917) 06 CAL CK 0049
In the Calcutta High Court

Abdul Aziz Mandal and Others

APPELLANT

Vs

Behari Lal Biswas and Others

RESPONDENT

Date of Decision : 22-06-1917

Acts Referred:

Bengal Patni Taluks Regulation, 1819 — Section 13(4)

Citation : 41 Ind. Cas. 711

Hon'ble Judges : Richardson, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal by the defendants against a judgment of the learned Subordinate Judge of Nadia, dated the 2nd June 1915, affirming the decision of the Munsif of Ranaghat. The suit was brought for rent of four holdings. The plaintiff sued as the person entitled to a lien, he being put in possession of the property under the provisions" of Section 13, Sub-section (4), of Regulation VIII of 1819. The suit was brought for the years 1316 and 1317. A portion of the rent of 1316 had accrued due prior to the date the mortgagee, the plaintiff, was put into possession. Out of the points that were-raised in the lower Courts, only two points have been argued in this Court. The first point is whether the plaintiff can recover as a landlord within the meaning of the Bengal Tenancy Act the kist of rent" for 1315, which accrued due before he was put into possession under the provisions of Section 13, Sub-section (4), of Regulation VIII of 1819 : and the second point is, "does the period of limitation for recovery of rent provided for in the Bengal Tenancy Act apply to this case or is the plaintiff's claim governed by the period provided for by the Indian Limitation Act?" These are the only two points that are open on the present appeal. The other question as to whether the lien of the plaintiff had been satisfied or not, which has been attempted to be argued with some force, is a matter which was not urged in the lower Courts and is not purely a question of law and partly depends on a consideration of other facts which have not been gone into.

2. The first point for consideration is, "what is the position of the person, the

tenure-holder or the dur-putnidar, who pays the rent in order to save the putni from being brought to sale under the provisions of Section 13, Sub-section (4), of Regulation VIII of 1819?" The sub-section says that he should be considered to have a lien and that that lien is to be in the same manner as if the loan had been made on a mortgage. That is the first provision. The second provision is that he is entitled to obtain immediate possession of the tenure of the defaulter in order to recover the amount so advanced from any profits belonging thereto. The position is the same as that of a mortgagee put into possession under an English mortgage, namely, where the mortgagee can enter into possession by virtue of his mortgage, collect and receive rents and grant receipts for the same. He is not treated as a simple mortgagee who has only the right to have the property brought to sale, by a Court of Law for the satisfaction of his claim, but he is given the express right of a mortgagee in possession and he has the right also to recover the amount so advanced from any profits belonging to the property. According to the Bengal Tenancy Act, a tenant has got to hold under the landlord. The question is, whether the tenant holds under the mortgagee in possession u/s 13, sub-Section (4), of Regulation VIII of 1819, that is, whether the mortgagee in possession is a landlord. I think clearly he is a landlord. He is the only person who having been put into possession can give the tenants receipts for rent. No other person, having regard to the terms of the section, can give the tenants a discharge and, therefore, I think, the person put into possession under sub-section (4) of Section 13 of Regulation VIII of 1819 is a landlord within the meaning of the Bengal Tenancy Act. Then the question is, does the sub-section vest in the person put into possession under the terms of it a right to recover the rent in arrears that has not been paid or realised?" I think it clearly does. The words used are that the person making the payment is to be put into possession in order to recover the amount from and profits belonging thereto. Rents due and unrealised must be profits belonging thereto and being such they pass by virtue of the sub-section to the plaintiff.

3. The next point is, as I have already stated, "Is the mortgagee in possession a landlord?" I have remarked above that there seems to be no doubt that he is. If he is a landlord, the provisions of the Bengal Tenancy Act, the land being agricultural land, apply and the landlord is entitled to the period of limitation mentioned in the Bengal Tenancy Act and not to the period mentioned in the Indian Limitation Act. It is quite clear in this case that the learned Judge of the lower Appellate Court on the points urged before him arrived at a correct Conclusion. The present appeal, therefore, fails and must be dismissed with costs.

Richardson, J.

4. I agree in the conclusion which has been arrived at by my learned brother and also in the reasons which he has assigned for that conclusion. I will only add that in Regular Appeal No. 66 of 1917 decided on the 14th June 1917, it was held by Mr. Justice Nalini Ranjan Chatterjea and myself that a Receiver stood in the position of a landlord and a proprietor for the purpose of bringing a suit in

ejectment against a tenure holder u/s 66 of the Bengal Tenancy Act. The point decided in that case resembles the point that arises in the present case. The contention that the person who sued in the one case for ejectment aid in the other for the rent was not entitled to sue in the capacity of proprietor or landlord cannot, in my opinion, be supported. I agree that the appeal must be dismissed with costs.