

(1927) 05 PAT CK 0031
In the Patna High Court

Achutanand Singh

APPELLANT

Vs

Gayanchand Mahton and Others

RESPONDENT

Date of Decision : 25-05-1927

Acts Referred:

Bengal Tenancy Act, 1885 — Schedule 3

Citation : AIR 1927 Patna 313

Judgement

1. This case raises a point as to execution of a decree under the Bengal Tenancy Act. The plaintiff in the action obtained a decree for Rs. 338 on the 3rd August 1922. It would appear that there was a compromise to this extent that the decretal amount should be paid in two instalments, that is to say, as to Rs. 125 on the 3rd Pous 1330 fasli, and as to Rs. 213 on the 30th Jaith 1330 fasli. No attempt to execute this decree was made until the 23rd November 1925, three years after the passing of the decree, when the present execution case was filed. The answer to the case is that "the three years, within which execution must be levied of the decree for rent under the Bengal Tenancy Act, has passed, and, therefore, the plaintiff has lost his rights. It is argued, however, that, as the learned Subordinate Judge of Gaya had no jurisdiction to make a decree payable by instalments, the decree ceases to be one for rent and becomes a money-decree and consequently is outside Schedule 3, Bengal Tenancy Act.

2. However, the case of Shib Narain Mookerjee v. Baikuntha Nath Isar [1907] 11 C.W.N. 857 which is the authority for the proposition that under the Bengal Tenancy Act the Court has no jurisdiction to make the decree for rent payable by instalments, also decided that if such a decree was made, it was merely, an error of law and did not go to the jurisdiction of the Court making such a decree.

3. An error in law does not invalidate the judgment until it is set aside by a superior Court, and the decree in this case remains and has not been reversed by any competent Court, but is merely attacked indirectly in this application to execute upon it. In any event, if there be an error in law, it is cured in this case as the decree for payment by instalments was by consent. Under these

circumstances, in my opinion, the decree is one for rent and not for money.

4. Further, it is pointed out in the case above quoted that Schedule 3 of the Bengal Tenancy Act, which deals with the question of limitation, uses the words for the execution of a decree or order made in a suit between landlord and tenant to whom the provisions of this Act are applicable and not being etc.

5. It would appear, therefore, that the facts of the applicability of the provisions regarding limitation is whether the suit was between landlord and tenant to whom the provisions of the Act apply. This test is satisfied in this case, and that being so the decree is one for rent, the consequence of which is that the plaintiff who seeks to execute his decree is clearly out of time.

6. The appeal is, therefore, dismissed with costs.