
(1914) 04 CAL CK 0028
In the Calcutta High Court

Askoran Satia

APPELLANT

Vs

Satish Chandra Bhattacharya and Others

RESPONDENT

Date of Decision : 02-04-1914

Acts Referred:

Citation : 24 Ind. Cas. 281

Hon'ble Judges : Beachcroft, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This appeal is directed against a decree by which a Special judge has dismissed a suit u/s 105 of the Bengal Tenancy Act on the ground that the plaintiff was not competent in view of the provisions of Section 188 of maintaining a proceeding u/s 105, as he was one of several joint landlords.

2. The defendants are in occupation of lands situated within three revenue paying estates, Nos. 23, 26 and 31. They have been recorded in the Record of Rights as persons who are in occupation, without payment of rent, of lands liable to assessment. One set of defendants has the status of tenure-holders : some are described as settled raiyats : and one is recorded as an occupancy raiyat. In respect of all of them the note is made that they are liable to have rent assessed in respect of the lands in their occupation. The plaintiff who is the purchaser of estate No. 31, which has been sold for arrears of revenue and which comprises a one-fourth undivided share of the plots included within the various tenancies, now seeks for settlement of fair rents u/s 105 of the Bengal Tenancy Act.

3. It has been assumed for the purposes of the argument before us and for that purpose alone that the proprietors of the three estates, before the revenue sale of estate No. 31, constituted joint landlords of the defendants. The question for determination is whether that state of things must be deemed to continue notwithstanding the sale of estate No. 31 for arrears of revenue.

4. The rights of the purchaser of an entire estate, which has been sold for arrears of revenue, are defined in Section 57 of Act XI of 1859. Briefly stated the

purchaser of an entire estate acquires the estate free from all incumbrances which may have been imposed upon it after the time of settlement and is entitled to avoid and annul all incumbrances and forthwith eject all under-tenures subject to four specified exceptions. The proviso to Section 37 further lays down that although the purchaser is not entitled to eject a raiyat with a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws or otherwise than the former proprietor may have been entitled to do, he can exercise his rights irrespective of all engagements made since the time of Settlement. It is, consequently, plain that the purchaser of an entire estate sold for recovery of arrears due on account of the same is in no sense a representative-in-interest of the defaulting proprietor. He occupies a higher position and is entitled to advantages which cannot be claimed by the defaulter. What then is the true position where as here tenants hold under proprietors of three estates as their joint landlords and one of these estates is sold for arrears of revenue? The purchaser does not stand in precisely the same relation to the tenants as the proprietors of the estates, which have not been sold, do. If, for instance, there is an under-tenure which has been created since the time of the Settlement and is binding upon the owners of the estates which have not been sold, the revenue sale purchaser is entitled to avoid it and either to eject the under-tenure-holder or to have fair rent assessed in respect of the land held by him. Similar remarks apply to the case of an occupancy raiyat. The proprietors of the estates which have not been sold are bound by the engagements which they or their predecessors may have made with the raiyat. The purchaser of the estate which has been sold is, on the other hand, entitled to have the rent assessed irrespective of such engagements. Under the circumstances, the view cannot be maintained that the purchaser of the estate which has been sold occupies the position of a joint landlord along with the proprietors of the estates which have not been sold in the same manner as the defaulting proprietor did. Section 188 merely provides that where two or more persons are joint landlords anything which the landlord is, under the Act, required or authorised to do, for instance the institution of a proceeding u/s 105, must be done either by both or all those persons acting together. The expression "joint landlords" is nowhere defined in the Bengal Tenancy Act, but it is plain that joint landlords are required to act together on the assumption that if they did act together, they would be all entitled to the same relief. Where, consequently, the constituent members of the entire body of landlords do not all occupy the same status, where, as here, the rights of one in relation to the tenant are different from those of another, they cannot be held to constitute a body of joint landlords. In the case before us, as the proprietors of the two estates, which have not been sold are not entitled to the same relief as the purchaser of the estate which has been sold, it would clearly be illogical to hold that the proprietors of these three estates are joint landlords : even if it be assumed that the proprietors of the three estates originally did constitute a body of joint landlords, the effect of the revenue sale was plainly a disruption. We may observe that it was ingeniously

argued that as it may transpire in the end that, in the special circumstances of this case, the revenue sale purchaser can get no other relief than the proprietors of the other estates, the question, whether Section 188 does or does not operate as a bar, should be determined after the defence has been investigated. But it is obvious that the question, whether the proceeding instituted by the plaintiff can or cannot be maintained, cannot be determined with reference to a possible defence to be taken by the defendants. In our opinion", it is plain for the reasons stated that Section 188 does not bar this proceeding.

5. We may add that we are not impressed by the contention of the appellant that inasmuch as the plaintiff alleges that rent has never been paid by the defendants and as consequently this is a proceeding in essence for the settlement of rent where no rent has previously been levied, Section 188 should not be treated as a bar. We are of opinion that there is no force in this contention. Rent can be assessed only on the assumption that the defendants are tenants, though by reason of circumstances which probably cannot now be ascertained they have not hitherto paid rent.,, They would thus be tenants and, if the landlords were originally joint, they would still be tenants under joint landlords, but for the circumstance that one of the estates has been sold and has passed into the hands of a purchaser who has thus acquired a status fundamentally different from that of the proprietors of the estates which have not been sold.

6. The result is that this appeal is allowed, the decree of the Special Judge set aside and the case remanded to him in order that the appeal may be heard on the merits, and all questions involved therein considered and decided. The appellant is entitled to his costs both here and in the Court of appeal below.

S. A. No. 1919 op 1911.

8. For the reasons assigned in our judgment in Second Appeal No. 1605 of 1911 this appeal is allowed, the decree of the Special Judge set aside, and the case remanded to him in order that the appeal may be heard on the merits and all questions involved therein considered and decided. The appellant will have his costs both here and in the Court of appeal below.