

(1927) 04 PAT CK 0018
In the Patna High Court

Baidik Lachmi Narain Jha and Others

APPELLANT

Vs

Najabat Khan and Others

RESPONDENT

Date of Decision : 21-04-1927

Acts Referred:

Bengal Tenancy Act, 1885 — Section 153

Citation : AIR 1927 Patna 300

Hon'ble Judges : Dawson-Miller, C.J;Kulwant Sahay, J

Bench : Full Bench

Judgement

Dawson-Miller, C.J.—In these three cases, in which the appeals have been heard together, the plaintiffs sued for rent.

2. Various questions were raised by way of defence in the suits, amongst others, that the plaintiffs had no interest in the property as tenure-holders, which was the plaintiffs' case, and, therefore, were not entitled to sue the tenants for rent; secondly, that there was no relationship of landlord and tenant between the parties. Before the Munsif the plaintiffs succeeded in obtaining a decree in each for the rent claimed. The matter went on appeal to the Subordinate Judge and no question was raised, which has been raised now, as to each right of appeal from the Munsif. The Subordinate Judge took a different view of the facts from that taken by the Munsif and dismissed the plaintiffs' suit in each case. He was of opinion that the plaintiffs had not made out their title as tenure-holders and that there was in fact no relationship of landlord and tenant between the parties. He accordingly set aside the decree of the Munsif and dismissed the suits.

3. From that decision a second appeal was preferred to this Court and came before Mr. Justice Adami. The only question raised before Mr. Justice Adami was that the appeal from the Munsif to the Subordinate Judge was barred by the provisions of Section 153, Bengal Tenancy Act. That section provided as follows:

An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for "the recovery of

rent where

(a) The decree or order is passed by a District Judge Additional Judge or Subordinate Judge, and the suit does not exceed one hundred rupees; or

(b) the decree or order is passed by any other judicial officer specially empowered by the local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees ;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto.

4. The rest of the section is not material for present purposes. The point which was argued before Mt. Justice Adami was whether or not the decision of the Munsif was based upon a question relating to title to land. Mr. Justice Adami relying upon certain authorities in the Calcutta High Court held that the decision of the Munsif did decide a question relating to title to land or to some interest in land. He held, therefore, that there was an appeal from the Munsif to the Subordinate Judge and consequently that the hearing of an appeal by the Subordinate Judge was within his jurisdiction. Being governed by the findings of the Subordinate Judge he did not interfere with that decision and accordingly the appeal was dismissed.

5. From that decision an appeal was brought to this Bench under the Letters Patent. Much argument was addressed to us on the question whether or not in the particular circumstances of this case the decision of the Munsif was one relating to title to land. Although we were not prepared to agree with the decision of Mr. Justice Adami on that point, for we think that the authority relied on by him is distinguishable on the facts of the present case, still it does appear now on further enquiry that the case in so far as the Munsif's decision is concerned is not one coming within Section 153 of the Bengal Tenancy Act at all. That section as I have already stated, provides that there shall be no appeal from a District Judge, Additional Judge or Subordinate Judge in such cases whether that decision be given in the first instance or on appeal and under Sub-section (b) no appeal lies from the decree or order of any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under the section. It turns out that the Munsif in this case although he was specially empowered on the 9th June, 1922, to exercise jurisdiction under that section was not so specially empowered when this case came before him in the previous January.

6. Therefore the Act did not apply to him. Accordingly an appeal lay to the Subordinate Judge and under the provisions of the section the decision of the Subordinate Judge was final.

7. In these circumstances no appeal lay to Mr. Justice Adami and for that reason he was right in dismissing the appeals.

8. The present appeals must accordingly be dismissed with costs, the respondents to have one set of costs only in these appeals.

Kulwant Sahay, J.

I agree.