
(1925) 03 CAL CK 0095
In the Calcutta High Court

Bejoy Chand Mahatab

APPELLANT

Vs

Beni Madhab Chaudhury and Others

RESPONDENT

Date of Decision : 18-03-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 153, 30(6)

Citation : AIR 1925 Cal 936 : 90 Ind. Cas. 71

Hon'ble Judges : Chakravarti, J

Bench : Single Bench

Judgement

Chakravarti, J.—(S.A. No. 676 of 1923).--This is an appeal by the plaintiff and arises out of a suit brought by him for assessment of fair and equitable rent for the lands in suit on the ground stated in Section 30, clause (6) of the Bengal Tenancy Act, and after assessment of fair and equitable rents for a decree for rent payable for the years 1324 to 1327 B.S. The defence of the defendants was that no between the parties, and secondly that the rent ought not to be varied or enhanced.

2. The Court of first instance raised three issues--first, whether there was any relationship of landlord and tenant between the parties; secondly, what was the tjama, and whether the rent was liable to be enhanced; and if so, what should be the enhanced rate. The third issue was a general issue as to the relief to which the plaintiff was entitled. The trial Count, upon the evidence, decided the first issue against the plaintiff, and held that no relationship of landlord and tenant was established by the plaintiff. In that view the Court of first instance refrained from deciding the other issues is the case.

3. There was an appeal by the plaintiff to the Subordinate Judge, which was dismissed on the ground that the learned Munsif who decided the case was vested by the Government with special powers as contemplated by Section 153, clause (b), and the claim in the suit being under Rs. 50 no appeal lay to him, as there was no question as indicated in Section 153 which would bring the case within the exceptions.

4. In this appeal, on behalf of the plaintiff, the learned advocate for the plaintiff-appellant contended that an appeal to the Subordinate Judge was competent, because Section 153 contemplates only eases for rent. The section runs 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..." It is unnecessary to quote the other part of the section for the purpose of the point raised. It was contended that this was not a suit for rent simpliciter, but It was a suit where assessment of fair and equitable rent was prayed for and than recovery of rent so assessed was prayed; and that if it was not a suit for rent as contemplated by Section 153, but was a suit which, in addition to being a suit for rent, was also a suit for assessment of rent, Section 153, clause (b) would be no bar. I have had the plaint read out be me and I find that the plaint clearly states in paragraph 8 the ground on which the assessment of rent is prayed and then there is a prayer for recovery of rent. The question, therefore, is limited to this was it a suit for rent as contemplated in Section 153 or was it a sail for assessment of rent and also for rent? It was contended by the learned vakil for the respondents that, although there was a prayer for assessment of rent, It was a suit for rent, because the plaintiff wanted to recover rent after assessment of fair and equitable rent.

5. I think an appeal should not be held to be barred unless it comes within the express limitation provided by the statute. I do not see any reason why the section should be held to apply to the present case, because there may be suits for rent where no assessment of rent is claimed. If the section is limited to the latter class of oases, it seems to me the words of the section "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, or a question of right to enhance or vary the rent of a tenant or a question of the amount annually payable by a tenant" would be appropriately applicable to a suit for rent where the questions, as contemplated, are in the words quoted. It may be observed that in a suit for assessment of rent, the question of right to vary the rent is involved in the suit itself. In the case of *Lala Dkanuhdhari Lal v. Baburam Ahir* [1903] 10 C.L.J. 629, Mr. Justice Stephen, sitting with Mr. Justice Chatterjee, held that a suit where a prayer for assessment of rent was added to the prayer for recovery of rent was not a suit for rent within the contemplation of Section 153. The learned Judges say in the course of their judgment that "the suit is, therefore, for assessment of rent independently of the prayer for recovery of rent from defendant No. 1." I think that reasoning is quite applicable to the present case. Here also there was a prayer for assessment of rent, although ultimately there was the prayer for recovery of rent after assessment of rent. In this view it seems to me that the appeal was competent and ought to have been tried by the learned Subordinate Judge on the merits. If "the learned Subordinate Judge finds that the defendants are tenants under the plaintiff, it would then be his duty to discuss the other questions which arise in the case.

6. In this view I think the case ought to go back so that the learned Subordinate

Judge may decide the appeal on the merits.

7. The plaintiff is entitled to the costs of this appeal.

8. (S.A. 753 of 1923.)-My judgment in Appeal No. 676 of 1923 governs this appeal also.

9. There are two applications connected with these two appeals. They are not pressed and no orders are necessary on them.