

(1939) 02 CAL CK 0019
In the Calcutta High Court

Bibhuti Bhusan Sarcar and Others

APPELLANT

Vs

Promoda Sundary Deby

RESPONDENT

Date of Decision : 03-02-1939

Acts Referred:

Limitation Act, 1963 — Article 110

Citation : AIR 1939 Cal 468

Hon'ble Judges : Biswas, J

Bench : Division Bench

Judgement

Biswas, J.—This is a rule obtained by the plaintiffs in a suit which was dismissed by the Small Cause Court Judge of Ranaghat. The suit had been originally filed before him sitting as a Munsif in his ordinary jurisdiction, but was afterwards transferred to his Small Cause Court file and disposed of by him in the exercise of his Small Cause Court jurisdiction. The plaintiffs were purchasers of a touji at a sale for arrears of revenue. The sale was held on 27th March 1933, but took effect from 13th January 1933, corresponding to 29th or the last date of Pous, 1339 B.S. Under the touji the defendant held a putni at an annual rent of Rs. 550-3-0. Shortly after the sale, on 1st April 1933, or 18th Chaitra, 1339 B.S., the plaintiffs purported to annul the putni u/s 37 of Act 11 of 1859. The plaintiff's case is that notwithstanding the sale and the annulment, the defendant went on realizing rents from the tenants under him which it is alleged were payable in quarterly kists. Hence the present suit in which they seek to recover from the defendant, cot arrears of rent of the putni which they had annulled, but damages, the damages being claimed in respect of the last two quarters or the Pous and Ghaitra kists of the Bengali year 1339. The damages are assessed at the rate of the rent which was payable by the defendant for the putni. The total claim including interest is laid at Rs. 254-6-11, after allowing a deduction of certain amounts which they had themselves realized from the tenants. It is stated that prior to this suit the plaintiffs had brought a number of suits for rent against the tenants in the Munsif's Court, in which they had joined the present defendant as a party, making substantially the same allegations against her as in

this suit. These rent suits were all pending at the date the present suit was instituted, but from a subsequent petition for amendment of the plaint it appears that the plaintiffs since recovered decrees therein, and by the amendment they offered to give the defendant credit in this suit for those decrees.

2. As already stated the learned Small Cause Court Judge dismissed the suit. He held that the plaintiffs as purchasers would be entitled to the Pous kiat, presumably on the ground that this kist fell due on the last date of Pous, being the date on which their purchase took effect, but that the claim was barred by limitation under Article 110 of Soh. 1, Limitation Act, which provides a three years" limitation for a suit "for arrears of rent". As for the Chaitra kist, the learned Judge held that as the putni was annulled on 18th Chaitra, the plaintiffs were not entitled to it, seeing that the kist did not fall due till the end of that month. It seems to me that the learned Judge took an entirely wrong view regarding the nature of the claim. The judgment shows that he treated the suit as if it was one for recovery of arrears of putni rent due from the defendant. That clearly was not the plaintiffs" case, and further, that is not the view which the learned Judge had taken when as a Munsif he re-turned the plaint for presentation to the Small Cause Court. The fact that the plaintiffs asked for damages on the basis of rent could not convert the suit into one for rent.

3. It is enough to point out that the whole of the plaintiffs" case proceeds on the basis that they had annulled the putni. That means that they had refused to recognize the putni, and as it is not alleged that between the date of sale (meaning, thereby the date from which the sale took effect) and the date of annulment they accepted any rent from the defendant, I do not see how the claim in this suit could be regard, ed as a claim for rent. It was no doubt open to the plaintiffs after their purchase to treat the putni as subsisting, but they did not elect to do so. As was pointed out by the Judicial Committee in AIR 1931 314 (Privy Council) la purchaser at a revenue sale has the option to annul an under tenure u/s 37 of Act 11 of 1859, unless it falls within one of the exceptions set out in the Section. The putni in this case, according to the plaintiffs, does not come within the exceptions. The plaintiffs therefore had the right to annul it, and they purported to exercise that right. I find myself unable to accept the contention of the opposite party that so long as a purchaser at a revenue sale allows an under-tenure to subsist before he elects to annul it, the relation between the purchaser and the under-tenure holder is that of landlord and tenant, so that the former will be entitled to rent from the latter for this period. Some support is sought to be lent to this contention from a passage in the judgment of the Judicial Committee in AIR 1931 314 (Privy Council) which is as follows:

Unless and until the taluk is annulled, it continues: the talukdar becomes the under-tenant of the purchaser, and the tenants holding under him are not affected by the change of proprietorship.

4. But these words are to be read in the context in which they were used. Their

Lordships were there considering the position of the tenants under the talukdar vis a vis the purchaser, and they pointed out that as there was no privity of contract between them and the purchaser, the purchaser could neither claim the rent from them nor eject them so long as he allowed the taluk to continue. The question is as to whether a purchaser who finally elects to annul an under-tenure may claim rent for the period antecedent to the annulment, or as to what effect the receipt of rent by the purchaser from the under-tenure holder would have on his right to annul the under-tenure was not before their Lordships, and they neither expressed, nor was it necessary for them to express, any opinion on the point. In my judgment, if a purchaser accepts rent from an under-tenure holder, he must be deemed to have waived his right to annul the under-tenure. And it follows that if a purchaser annuls an under-tenure, without having received any rent from the holder of it (as must necessarily be the case as a condition precedent to annulment), he must be taken to have refused to recognize the under-tenure from the date of sale. This is in fact the underlying principle of the decision in the two cases on which the petitioners relied, *Ramratan Kapali v. Aswini Kumar Dutt* (1910) 37 Cal. 559 and *Darsan Singh v. Bhawani Kore* 17 C.W.N. 984, where it was laid down that a purchaser at a revenue sale who afterwards annuls an under-tenure can only recover damages for use and occupation for the period antecedent to the annulment, the damages to be calculated on the basis of the rent which was payable by the under-tenure holder to the defaulting proprietor. As for the period after annulment, the position would be different, as the under-tenure holder would then be a trespasser, and the purchaser would be entitled to mesne profits which may or may not be calculated on the same basis.

5. Applying these principles to the present case, the position would appear to be this. The plaintiffs would be entitled to damages from the date of sale (13th January 1933) to the date of annulment (1st April 1933), and to mesne profits for the subsequent period. Obviously, to the claim for none of these periods, Article 110 of Schedule 1, Limitation Act, would apply, as the claim would not be one "for arrears of rent" within the meaning of this Article. The Article applicable would be Article 120. The learned Small Cause Court Judge was therefore wrong in dismissing any part of the claim as barred by limitation. Limitation being out of the way, it is next necessary to see what the plaintiffs can recover, if they can establish their case. In the first place, it is to be observed that they have expressly limited their claim to the end of Chaitra 1339, B.S. They cannot therefore recover any damages or mesne profits beyond that period. Secondly, having regard to the nature of their claim, it is clear that they cannot recover any damages in respect of any period prior to the date on which the sale took effect and their title accrued. If they were suing the defendant for arrears of putni rent, it might have been open to them to claim the whole of such arrears which might fall due on or after the date of sale, irrespective of the fact that the rents accrued in respect of a period antecedent thereto, but as they are only entitled to damages or mesne profits, their claim must take effect from the actual date of

accrual of their title and not in respect of any prior period. Thirdly, the plaintiffs having themselves computed the damages for the whole of the period in suit on the basis of the putni rents, they must be held bound to this basis of assessment even as regards the period for which they would be entitled to damages by way of mesne profits.

6. It is obvious that the suit has not been properly tried at all. It is also clear that though it is not a suit for rent, still regard being had to the pleadings and the issues involved, it cannot be tried as a Small Cause Court suit. For one thing, if the suit is held to be maintainable, an enquiry will be necessary as to the amounts alleged to have been realized by the plaintiffs from the tenants or for which the plaintiffs recovered decrees in the rent suits in the Munsif's Court which were pending at the date of institution of the present suit. As regards these rent suits, again, it is surely a point which requires to be considered, though it does not appear to have received any consideration either in the arguments in this Court or in the Court below, as to how far the pendency of these suits or the decrees since passed therein affect the maintainability of the present suit.

7. The result is that in my opinion the judgment of the learned Small Cause Court Judge must set aside, and the case remitted to him in order that it may be retransferred to the ordinary jurisdiction and disposed of in such jurisdiction in the light of the observations contained in this judgment. Parties will be at liberty to raise all relevant issues, including the question of maintainability of the suit, and to adduce evidence afresh. The rule is accordingly made absolute; costs two gold mohurs. The costs of the Court below will abide the result. The record will be sent down without delay.