

(1929) 06 CAL CK 0020
In the Calcutta High Court

Bir Bikram Kishore Manikya Bahadur

APPELLANT

Vs

Rajjab Ali and Others

RESPONDENT

Date of Decision : 06-06-1929

Acts Referred:

Bengal Tenancy Act, 1885 — Section 30(b)

Citation : AIR 1930 Cal 238

Hon'ble Judges : Rankin, C.J.; Mukerji, J

Bench : Full Bench

Judgement

Rankin, C.J.—This is a Letters Patent Appeal from the judgment of my learned brother Mitter, J. sitting on second appeal. This appeal is brought by the plaintiff. The suit was brought in the Court of the Munsiff at Comilla for recovery of arrears of rent due in respect of "the years 1332 to 1332 T.B. with cesses and damages. There was a claim for enhancement of rent on the ground of the rise in the price of staple food crops.

2. It appears that the defendants were holding certain agricultural land under the plaintiff and were also holding an undivided share of the homestead land. According to various decisions of this Court, it is now well settled that, where the land let to a tenant comprises an undivided share in certain land, the letting is not the letting of a holding within the meaning of the definition in the Bengal Tenancy Act. On that ground, the Courts below have unanimously refused to give effect to the prayer for enhancement of rent u/s 30(b) Ben. Ten. Act.

3. The plaintiff in this appeal makes two points. One is that the recent Act amending the Bengal Tenancy Act has, altered the definition of the word holding so that, after that Act has come into force, it can no longer be said that such a tenancy as the present is not a holding within the meaning of the definition. Mr. Ramesh Chunder Sen who appears for the plaintiff-appellant contended before us that, though the amending Act came into force after this suit was decided, nevertheless it was open to us and we were obliged to give effect to the new definition. In my opinion, there are no words in the amending Act which show or

even tend to show that the amendment of the definition is to be applied with retrospective effect; still less is there anything to show that on the ground of the amendment, the Court is to disturb a decision between the parties correctly arrived at according to law on the date of the decision. That point, therefore, in my opinion, fails.

4. The second point which was maintained before us was this that, before Chap. 10, Ben. Ten. Act, was amended, namely in 1898, there was a suit under the old Section 104. Ben. Ten. Act for the settlement of fair rent in respect of this tenancy. The suit was dealt with by a judgment which also dealt with various other suits of a like character. The particular question or objection arising out of the fact that a portion of the land in this case is only an undivided share does not appear to have been mentioned to the Settlement Officer at all. But, dealing with the various cases before him, the Settlement Officer did consider the question whether there was anything which protected any of the tenancies which he was considering from enhancement of rent. He was not put in sight of anything which would prevent any enhancement of rent in any of these cases and he did, in fact enhance the rent of this particular holding purporting to act by virtue of the old Section 104 u/s 30(b), Ben. Ten. Act. The question is whether in view of that decision the plaintiff in this case is able to say to the defendants that they are precluded from raising the objection that the tenancy is not a holding and the rent is not enhancible u/s 30(b). The decision of the Settlement Officer is given the force of a decree of the civil Court and there can be no doubt, therefore, that when the Settlement Officer enhanced the rent, as he did, from Rs. 5-9-0 to Rs. 8-9-0 that decision must take effect and that the legal rent thereof payable and due was Rs. 8-9-0. If, however, it is to be contended that it has been decided against the defendants for all purposes and for the purpose of the present case that the rent is enhancible, that must be by reason of the principle of res judicata. It is not any part of the immediate effect of the decision of the Settlement Officer. Mr. Ramesh Chunder Sen appreciated in his argument before us that there would be some difficulty in applying the principle that is some times spoken of as constructive res judicata, that is to say, in applying Expl. 4 to Section 11, Civil P.C. But, on examining the matter, it appears to me that there can be no question of res judicata in this case at all because, as has been pointed out more than once, particularly by the judgment of Lord Davey in the case of Gokul Mandar v. Pudmanan Singh [1902] 29 Cal. 707, the requirement of Section 11, Civil P.C. is that the officer who decided the issue in the previous case must have jurisdiction to decide this suit. Now, this is a suit for recovery of arrears of rent and in no way could that matter be within the jurisdiction of the Settlement Officer; and consequently it seems to me that there, is no question of res judicata in any sense of the word. It has been pointed out by a Special Bench of this Court in the case of Dharani Kanta Lahiri v. Gabar Ali Khan [1903] 30 Cal. 339 that, while the Bengal Tenancy Act says that the decision of a Settlement Officer is to have the force of a decree of a civil Court, it says nothing to give the decision of the Settlement Officer any force beyond what Section 11, Civil P.C.

properly applied to it would give. Consequently, it is not possible in this case in any way to say that the defendants are precluded from raising their objection to the enhancement of the rent of their tenancy by reason of the decision u/s 104, old Ben. Ten. Act.

5. In these circumstances, it appears to me that the conclusion arrived at by the learned Judge on second appeal was correct and that this appeal fails and must be dismissed. As the respondents do not appear, there will be no order as to costs.

Mukerji, J.

6. I agree.