
(1940) 08 CAL CK 0028
In the Calcutta High Court

Cooverji Manickji Bhesania

APPELLANT

Vs

Smt. Sukumari Dasi Mitra and Another

RESPONDENT

Date of Decision : 16-08-1940

Acts Referred:

Calcutta Municipal Act, 1923 — Section 304, 523
Limitation Act, 1963 — Section 5

Citation : AIR 1941 Cal 326

Judgement

1. This rule was issued upon the opposite parties to show cause why an order passed by the Munsif, First Court, Sealdah, in a suit to recover compensation paid by the Corporation of Calcutta u/s 304, Calcutta Municipal Act (Bengal Act 3 of 1923) should not be set aside. The material facts are these : The late Raj Kumar Roy of Narail was the owner of property which included premises No. 59-A, Satchasipara Road, Cossipore. In the year 1897 the said Raj Kumar Roy granted a mourasbi mokurari lease of this property to his two sons Hemanta Kumar Roy and Nirode Kumar Roy, and on the same day transferred his remaining interest in the property to his niece Srimati Sukumari Dassi. By the terms of the lease granted to Hemanta Kumar Roy and Nirode Kumar Roy, the latter were to pay an annual rent of Rs. 2400 and it was further provided that if any portion of the land covered by the lease should be acquired by Government or by any company, municipality, committee or board, the lessor should be entitled, if he chose, to claim either the whole or any part of the compensation, and that if he did exercise this option, the annual rent thereafter payable by the lessees should be reduced by one-twentieth of the amount of compensation taken by the lessor. On partition between Hemanta Kumar Roy and Nirode Kumar Roy, the mourashi mokurari interest in the property in question fell wholly in the share of Nirode Kumar Roy; and the latter, in February 1930, granted a darmourashi mokurari lease to Cooverji Manickji Bhesania.

2. In the year 1934, the Corporation of Calcutta, acting u/s 304, Calcutta Municipal Act, 1923, decided to take possession of a portion of the premises, measuring twelve chataks and 33 square feet, and assessed the amount of

compensation to be paid to the owner at Rs. 716-4-0 apportioning the same as follows, viz., Rs. 24-10-9 to Srimati Sukumari Dassi and the balance to Cooverji Manickji Bhesania. This award was made in the year 1935. In the year 1939, the said Srimati Sukumari Dassi instituted a suit in the Munsif's Court at Sealdah against the Corporation of Calcutta and against Cooverji Manickji Bhesania, alleging that notice of the acquisition had been fraudulently suppressed and that she alone was entitled to "the entire amount of compensation awarded and claiming that amount from both the -defendants. Defendant 1, the Corporation of Calcutta, contended that Section 523, Calcutta Municipal Act, 1923, was a bar to the suit, and an issue was framed in these words : "Issue 1-Has this Court jurisdiction to try this suit? " The learned Munsif on consideration of the provision of Section 523, Calcutta Municipal Act, came to the conclusion that he had no jurisdiction to entertain the suit as against defendant 1, but inasmuch as the claim was based on acts performed by defendant 1, the latter was a proper party to the suit for relief against defendant 2. The (learned Munsif accordingly passed the following order:

Let defendant 1 be made a pro forma defendant instead of one of the main defendants in the suit. Amend the plaint accordingly

Against this order, defendant 2 has obtained the present rule. Defendant 2 contends that the learned Munsif having decided that Section 523, Calcutta Municipal Act, 1923, was applicable, should have dismissed the suit or should have returned the plaint for presentation to the proper Court. In no circumstances, it is contended, had. the learned Munsif jurisdiction to order amendment of the plaint. The rule is opposed by the plaintiff. Defendant 1 was also represented at the hearing of the rule, but did not oppose.

3. The learned advocate for the plaintiff opposite party contended that the learned Munsif was wrong in holding that Section 523, Calcutta Municipal Act, had any application and that consequently he was entitled to seek relief in the civil Court against defendant 2. He further contended that though the learned Munsif may not have been strictly right in ordering amendment of the plaint, he was right in allowing the suit to proceed against defendant 2 and any error in the order to amend the plaint had ceased to be of importance in view of the fact that plaintiff had subsequently applied to amend the plaint on the same lines. The material question for our consideration therefore is whether Section 523, Calcutta Municipal Act, is a bar to the institution of such a suit in the ordinary civil Courts. The petitioner contends that it is a bar. The plaintiff-opposite party contends firstly, that Section 523, Calcutta Municipal Act, 1923, does not apply to disputes between two persons claiming the same amount, and that even if it does apply it applies only when the dispute has arisen before payment of the compensation by the Corporation; secondly, that even if Section 523 does apply to such disputes, Section 525 gives an alternative or supplementary right of suit to determine such a dispute; and thirdly, that even if S.525 does not confer such a right, a right independent of Section 523 and similar to that recognized in

Section 31, Land Acquisition Act, must exist. Each of these objections deserves serious consideration. Section 523, Calcutta Municipal Act, 1923, provides a machinery for the settlement of disputes as to the amount of expenses or compensation to be paid and as to the apportionment of the same. There is no dispute in the present case as to the total amount of compensation to be paid. The question is whether there is a dispute as to the apportionment of the same.

4. The learned advocates for the plaintiff-opposite party drew our attention to the meaning of "apportionment" as given in the Oxford Dictionary viz., "Action of distributing or allotting in proper proportion or suitable share" and argued that when one person claims the whole amount there is no question of apportionment. In our opinion there is no justification for giving such a limited meaning to the word, and it can properly be applied to cases where one of two parties claims a share in the amount and the other party claims the whole. In *Kashim v. Aminbi* (92)16 Bom 525, which was a case under the Land Acquisition Act of 1870, it was held that apportionment includes a case where the Court has to decide between rival claimants to the entire compensation. We are satisfied therefore that the dispute between petitioner and plaintiff-opposite party is a dispute as to the apportionment of the amount.

5. It was next argued that Section 523, Calcutta Municipal Act, applies only to disputes which arise before the expenses or compensation are paid, and in this connexion emphasis was laid on the words "to be paid" in the phrase "the amount to be paid, and if necessary, the apportionment of the same." In our opinion, the meaning of the section is merely that a dispute as to the extent of the liability of the person required to make payment, or as to the apportionment thereof is to be decided according to the procedure laid down in the section. If the intention of the Legislature had been to limit the application of the section to disputes arising before payment, it would have been a simple matter to make such a provision and there would have been small justification for providing that the application for relief should be made to the Court within one year from the date when the expenses or compensation first became claimable. We are satisfied that Section 523 is not limited to disputes arising before payment. It was next contended that Section 525 of the Act also applies to such disputes and that an aggrieved person is entitled to seek his remedy either by proceeding u/s 523 or by instituting a suit u/s 525 of the Act. We can find no justification for such a contention. Section 525 permits the institution of a suit to recover sums whose amount has already been ascertained from persons whose liability for the same has been determined. It has no application to disputes as to the total amount to be paid nor to disputes as to apportionment of that amount. It must apply to cases not governed by Section 523. The fact that Section 524 provides that the order passed u/s 523 shall have the effect for some purposes of a Small Cause Court decree, seems to us sufficient to negative this contention.

6. Lastly it was argued that there must be a right analogous to that given in proviso 3, to Section 31 (2), Land Acquisition Act of 1894. It was pointed out

during argument that apparently Section 5, Limitation Act, does not apply to proceedings u/s 523, Calcutta Municipal Act, 1923, and this fact was used to reinforce the argument that there must be a right of suit independent of Section 523. We have not examined the question whether Section 5, Limitation Act, applies or not, but assuming that it does not, this fact is not sufficient to justify the inference that there must be an independent right of suit. The omission may be due to oversight; it may also be intentional; and it may have been thought that owners of property in a large town have no excuse for remaining in ignorance for more than a year after their property has been seized by the Corporation. In our opinion when by an Act special Courts are appointed to determine disputes, it must be held that the jurisdiction of the ordinary Courts to determine such disputes is ousted. On careful consideration of all the arguments advanced, we are satisfied that Section 523 applies to the present dispute between petitioner and plaintiff opposite party and that the ordinary civil Courts have no jurisdiction to determine the same. The learned Munsif should have returned the plaint for presentation to the proper Court. The rule is, accordingly, made absolute and the order of the learned Munsif is set aside. The petitioner is entitled to his costs, which we assess at one gold mohur.