
(1912) 09 CAL CK 0002
In the Calcutta High Court

Diwan Balmukund Sahai

APPELLANT

Vs

Tarini Singh and Others

RESPONDENT

Date of Decision : 03-09-1912

Acts Referred:

Bengal Tenancy Act, 1885 — Article 2(6)
Civil Procedure Code, 1908 (CPC) — Order 46 Rule 1
Limitation Act, 1908 — Article 110

Citation : 17 Ind. Cas. 343

Hon'ble Judges : Beachcroft, J; Ashutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is a Reference under Rule 1 of Order XLVI of the CPC of 1908. The question upon which our opinion has been sought is formulated in these terms: "Whether in a suit for recovery of rent of a raiyati holding by one whose interest as landlord has ceased to exist before the institution of the suit, the period of limitation provided in Article 2(6), Schedule III of the Bengal Tenancy Act, is applicable or the period of limitation provided by Article 110 of the Indian Limitation Act of 1908 should apply."

2. The plaintiff was an intermediate tenure-holder for a term, and the period of his lease expired on the 29th September 1909. On the 11th September 1911, he commenced this suit for recovery of arrears of rent which had accrued due to him before the expiry of his lease. The tenant contended that as the plaintiff ceased to be his landlord before the date when the suit was instituted, the provision of Article 2 of Schedule III of the Bengal Tenancy Act could not apply. That Article is in these terms: "A suit for recovery of arrears of rent brought by a sole landlord or the entire body of landlords or one or more co-sharer landlords, in all cases where the arrear fell due before a deposit was made u/s 61, must be instituted within three years from the last day of the agricultural year in which the arrear fell due." The contention of the tenant is, that to determine whether this is a suit for the recovery of arrears of rent brought by a sole landlord, the Court ought to have regard to the relationship of the parties at the point of time

when the suit is commenced. In our opinion, this is not a reasonable construction of Article 2. Whether a suit for the recovery of arrears of rent has been brought by a landlord within the meaning of that Article, ought to be determined with reference to the relation in which the parties stood when the right to sue accrued, that is, when the arrears of rent claimed fell due. If this view is adopted, there is no question that Article 2 is applicable. The view we take is supported by the principle which underlies the decisions of this Court in the cases of Chhataraput Singh v. Gopichand Bothra 26 AC. 750 : 4 C.W.N. 446; Srimanta Roy v. Mahadeo Mahata 8 C.W.N. 531 : 31 AC. 550 and Maharaj Bahadur Singh v. Forbes 35 AC. 737 : 7 C.L.J. 652. In the first of these cases, the principle was laid down that a decree for rent, obtained by the landlord after he has parted with his interest, is a rent decree and is enforceable as such. The same principle was recognised in Maharaj Bahadur Singh v. Forbes 35 AC. 737 : 7 C.L.J. 652 and it was further laid down in Srimanta Roy v. Mahadeo Mahata 8 C.W.N. 531 : 31 AC. 550 that a suit framed for the recovery of such arrears is a suit under the Bengal Tenancy Act. It is worthy of note that an attempt made to support the contrary view was not successful in the case of Khetra Pal Singh v. Kritartha Moyi Dasi 33 AC. 566 : 10 C.W.N. 547 (F.B.) : 3 C.L.J. 470 which overruled the decision in Hem Chander Bhunjo v. Mon Mohini Daasi 8 C.W.N. 604. In the case last mentioned, it had been ruled that a decree for arrears of rent obtained by a landlord at a time when he was the landlord of the defendant, lost its character as a rent decree, if, before execution was taken out, the plaintiff had ceased to be the landlord. This view, however, can no longer be maintained in view of the decision of the Full Bench in Khetra Pal Singh v. Kritartha Moyi Dasi 33 AC. 566 : 10 C.W.N. 547 (F.B.) : 3 C.L.J. 470. The Full Bench affirmed the doctrine that the character of the decree as a rent-decree is not affected by subsequent events. Mr. Justice O'Kinealy appears to have held, in the case of Hem Chander Bhunjo v. Mon Mohini Dassi 8 C.W.N. 604 that as a decree for ejectment obtained by the landlord cannot be executed against the tenant u/s 66 of the Bengal Tenancy Act after he had ceased to be the landlord, a decree for rent cannot be enforced by a sale of the holding after the decree-holder has ceased to be the landlord. It is fairly clear, however, that there is no analogy between the two classes of cases. The landlord who has obtained a decree for ejectment is entitled to execute the decree and obtain possession of the holding, only so long as he is the landlord; after the tenant has been ejected, he is entitled to take possession of the land, only because it is included within his property; when he ceases to be the landlord, he is obviously not entitled to execute the decree for ejectment. The same considerations, however, do not apply to an application for execution of a decree for rent by the sale of the defaulting holding. Reference may in this connection be made to the case of Sheikh Munsar v. Loknath Roy 4 C.W.N. 10 where it was ruled, upon the authority of the decision in Shama Soonderee Dossi v. Brindabun Chunder (1862) Marshall 199 : 1 Hay 574 that a suit by an assignee of rent is in essence a suit for rent; the same view was subsequently affirmed by a Full Bench of this Court in the case of Sris Chunder Bose v. Nasim Kazi 4 C.W.N. 357 : 27 AC. 827. In Mohendra Nath Kalamoree v. Koilash Chandra

Dogra 4 C.W.N. 605 it appears, however, to have been held that although a suit by an assignee of rent is a suit for rent for the purposes of the determination of the jurisdiction of the Court in which the claim can be enforced, it cannot be treated as a suit for rent for the purposes of the determination of the question of limitation. The case mentioned is not on all fours with that now before us, and when the question arises again, it may require re-consideration. At any rate, we are not prepared to extend the doctrine, which underlies the decision in Mohendra Nath Kalamoree v. Koliash Chandra Dogra 4 C.W.N. 605 to cases where, as here, the plaintiff, upon the expiry of the term of his own lease, seeks to recover arrears which had accrued due to him when he was the landlord of the defendant. It is further worthy of note that the decision in the case of Mohendra Nath Kalamoree v. Koilash Chandra Dogra 4 C.W.N. 605 was not followed in the case of Shashi Kumar Mirbahar v. Seeta Nath Banerjee 35 AC. 744 : 7 C.L.J. 425. We are, therefore, of opinion, upon a construction of Article 2 of Schedule III of the Bengal Tenancy Act, that the provisions of that Article apply to a suit for recovery of rent of a holding by one whose interest as landlord had ceased to exist before the institution of the suit, provided that the arrears claimed accrued due to him when he was the landlord of the defendant. There will be no order for costs, as the defendant has not entered appearance in this Court.

3. The same order will govern the second suit mentioned in the order of reference.

4. The records will be sent down as soon as possible with this expression of our opinion.