(1938) 12 PAT CK 0001

In the Patna High Court

Harihar Prasad APPELLANT

Vs

Anant Prasad and Another RESPONDENT

Date of Decision : 16-12-1938

Acts Referred:

Citation : AIR 1939 Patna 352

Hon'ble Judges : Manohar Lall, J

Bench : Division Bench

Judgement

Manohar Lall, J.—This is an appeal by the plaintiff arising out of a suit for recovery of arrears of rent on a holding which is sharahmoaiyan with an area of 2.07 aores in Mauza Katrabagh, Tauzi No. 2494 now situated within the Gaya Municipality. The claim of the plaintiff is limited to 8 annas being his share of this holding. The rental fixed was Rs. 57-7-6. The holding consists of a number of plots; one of them is a house in which the defendant, who is a tenant, resides. The only question which is now in controversy before me is whether the defendant is entitled to set off with respect to the municipal tax which he pays regarding the house.

2. The claim is limited again to set off for the house tax only the original claim for latrine tax and water tax had been given up during the course of the trial. The learned Subordinate Judge upon a consideration of Sections 100 and 109, Municipal Act, came to the conclusion that under Clause 2 of Section 109 a tenant is entitled to deduct from the rent the municipal tax which he pays for the land and then he fixed the amount which should be allowed to be deducted for the years in suit upon a basis which I shall consider in a moment. Hence the appeal before me.

3. The learned Government Pleader appearing for the plaintiff-appellant argues that the defendant has no right to claim a setoff for the house tax and that the ''defendant must be treated to be the '' owner" of the holding on account of the fact that the holding is sharahmoaiyan and therefore the tenant has an unrestricted right of transfer. I do not agree with this contention. The word

"owner" has been defined in the Act and in Sub-clause 18 of Section 3 it is stated to include every person who is entitled for the time being to receive any rent with respect to the land whether from the occupier or otherwise.

4. It cannot be denied that the plaintiff receives some rent (whether it is fixed or variable is immaterial) from the defendant. Anybody cannot even in common parlance far less in legal language describe the defendant, who is a"tenant, as the owner. I am therefore of opinion that the learned Subordinate Judge was right in deciding that the defendant Jaas a right to claim a deduction for the'' amount of the municipal tax paid on the holding.

5. The next question is whether the learned Judge was correct in fixing Rs. 3-6-0 on account of the defendant''s share of the municipal tax. The learned. Judge found that there was nothing to show what was the value pf the holding in suit. Now if that is so the very basis of the calculation disappears. Nevertheless the learned Judge relied upon the receipts (Ex. A series) showing that the plaintiff had been giving deduction at the, rate of Rs.3-6-0 per year on account of his 8 anna''s share. But these receipts are for a period anterior'' to the Record of Rights and are in no way admissible to show the true valuation of the holding for the year in suit.

6. Therefore come to the conclusion that the defendant has been unable to prove the amount which should be deducted from the tax payable or paid for the holding for the years in suit. It would be open to the defendant in any subsequent year to place proper materials as to the actual valuation of the holding in suit so that the Courts may proceed in accordance with law to determine the amount which should be deducted.

7. The result is that the appeal is allowed but as the plain, tiff himself had been giving deduction at the rate of Rs. 3.6-0 in the previous years and this induced the Court to grant a similar deduction, I disallow him the costs of this appeal. The plaintiff will be entitled to his full rent without the deduction as ordered by the learned Subordinate Judge and he will also get his costs in the Courts below.

