

(1933) 07 CAL CK 0006
In the Calcutta High Court

Haris Chandra Choudhury

APPELLANT

Vs

Nishi Kanta Nandy and Others

RESPONDENT

Date of Decision : 05-07-1933

Acts Referred:

Bengal Tenancy Act, 1885 — Section 15

Citation : AIR 1934 Cal 292

Judgement

1. The plaintiff in the suit out of which this appeal has arisen, the appellant in this Court, instituted a suit which has been described by the trial Court as a suit for assessment of rent of the land in suit and for recovery of arrears of rent. The claim in the suit appears to be for rent at the rate to be fixed by the Court and there was a further claim made by plaintiff for recovery of the rent so assessed by the Court. The plaintiff, as the superior landlord, instituted a suit for rent of a tenure mentioned as howla against two persons Satinath and Kshitinath. A decree was passed against these two persons who are brothers. In execution of the decree so passed, the plaintiff himself purchased the howla; and according to the plaintiff the land in suit in respect of which rent was claimed appertained to a subordinate interest described as mirash, an interest subordinate to the howla, which was said to have been purchased by the plaintiff. If the decree in the suit for rent could be treated as operative as a rent decree under the Bengal Tenancy Act, the plaintiff had undoubtedly a right to ask for assessment of rent and pray for recovery of the rent so assessed by the Court. If however the decree obtained by the plaintiff against the two persons named above was not a rent decree, the suit in the form in which it was brought was not maintainable. There was no right in the plaintiff to have enhancement of rent by way of assessment of the same as prayed for by the plaintiff in the suit. It appears that the howla belonged at one time to one Jotsna Kumari who got it from her mother as yautak stridhan and as such not only the two persons as Kshitinath and Satinath are heirs of Jotsna Kumari, but also the other two persons, the daughters of the aforesaid Jotsna Kumari, Snehalata and Labangalata, are the heirs of their mother.

2. The question was whether the suit for rent brought against the two brothers only was such a suit in which a decree for rent could be effectively passed, and whether such a decree could enable the plaintiff to bind the land appertaining to the howla. The Courts below have dismissed the suit after coming to the conclusion that the howla was not, and could not, be represented by the two persons Satinath and Kshitinath, against whom the suit for rent was brought by the plaintiff. There was no such representation by the brothers of the interest of their sisters in the tenancy which could enable the Court to pass a decree binding the tenancy. In this view of the matter, the decree passed in favour of the plaintiff in the suit brought against the two persons Satinath and Kshitinath, was an ineffective rent decree. It was however contended on behalf of the plaintiff before the Courts below, and that contention is urged before us in support of the appeal, that the persons other than the defendant in the suit for rent instituted by the plaintiffs Satinath and Kshitinath, had not notified their succession in the place of their mother Jotsna Kumari, after her demise; and as such it was not necessary for the plaintiff, the superior landlord, to bring a suit against them for the purpose of realization of rent due in respect of the howla. It is no doubt true that the daughters of Jotsna Kumari, Snehalata and Labangalata, had not notified their succession u/s 15, Bengal Tenancy Act.

3. But the effect of that was not, as has been contended by the plaintiff-appellant, that there could be an effective decree for rent in view of the fact that the persons other than the two defendants in the suit had not notified their succession as required by law. The learned Judges in the Courts below have held that it was the duty of the persons who succeeded to the howli to give notice u/s 15, Bengal Tenancy Act, to the plaintiff; but the failure on the part of the heirs to comply with the requirements of this section could not entitle the landlord to treat some of the heirs as representatives, of the other tenants in respect of the tenancy, and the decree obtained by him against them could not be regarded as a rent decree. The view thus expressed is in accordance with the decisions of this Court; and we have no hesitation in expressing our concurrence with the same. It may be mentioned that the omission to notify succession to the tenure as contemplated by Section 15, Bengal Tenancy Act, has only the result that the person succeeding to the tenure is not entitled to recover by a suit, or any other proceeding, any rent payable to him, by the subordinate tenants; but it does not affect his interest in the tenure in any other way. In the present case failure on the part of the daughters Snehalata and Labangalata to notify their interest to the owner of the howla, did not entitle the landlord to ignore them altogether, and to bring a suit against the other two persons only, who did not represent the tenancy as a whole. In the above view of the case the tenancy not having been represented in the suit for rent brought by the plaintiff, the howla could not pass at the sale held in execution of the decree obtained by the plaintiff, in the absence of two of the persons who were interested in the tenancy as tenants thereof.

4. The contention urged in support of the appeal cannot be accepted, and the

decision arrived at by the Courts below must be affirmed and we direct accordingly. The appeal is dismissed with costs.