

(1886) 06 CAL CK 0012
In the Calcutta High Court

Hemant Kumari Devi

APPELLANT

Vs

Surya Kant Acharya Bahadur
 Dhoronidbur Sen and
Others Vs Wajidunnissa Khatoun

RESPONDENT

Date of Decision : 25-06-1886

Acts Referred:

Land Registration Act, 1876 — Section 78

Citation : (1889) ILR (Cal) 706

Hon'ble Judges : W. Comer Petheram, C.J;Tottenham, J;Banerjee, J

Bench : Full Bench

Judgement

Tottenham and Banerjee, JJ.—This is an appeal against a decree for arrears of rent obtained by the respondent as zamindar against the appellant as holder of a tenure in her zamindari.

2. The plaintiff", respondent, claimed the whole of the estate as widow of the late Raja Jotindro Narain Roy. and to have come into possession upon the death of Rani Sarat Sundari Devi, who was the executrix under the will of the late Raja. It is not quite clear upon the pleadings on what date the plaintiff succeeded to possession, but it must have been either at the extreme end of the year 1292 or sometime in 1293.

3. The Court below over-ruling several objections, more or less technical, taken by the defendant, gave the plaintiff a decree.

4. The same objections have been urged in the appeal before us; and we are forced to the conclusion, we must say somewhat unwillingly, that as to one of these objections, technical as it is, the appellant is entitled to succeed. That objection is that when this suit was brought and when the decree was passed, the plaintiff was not registered under the Bengal Council Act VII of 1876. The lower Court got over this objection by saying that it appeared that, before the suit was decided, the plaintiff had made an application to have her name registered, and that that might, in the Subordinate Judge's opinion, be taken as

quite sufficient to satisfy the requirements of the law The law says in Section 78: "No person shall be bound to pay rent to any person claiming such rent as proprietor or manager, etc., unless the name of such claimant shall have been registered under this Act." It seems to us quite clear that the lower Court is wrong in supposing that an application to be registered is the same in effect as having been registered; for, if an application to be registered is the same in effect as having been registered, then in respect of every estate, there might be half-a-dozen claimants suing at the same time; and one of the objects of the law is that tenants should not be harassed by suits for rent by landlords who have no title thereto. The words of the law appear to us clearly to require before a person sues for rent, claiming as proprietor, that such person must be registered under the Act; for if a tenant is not bound to pay rent to an unregistered proprietor, he is not liable, we think, to be sued for it.

5. This observation has been made before in a similar case before this Court. The decision, which has been cited, is *Dhoronidhur Sen v. Wajidunnissa Khatoon** decided on the 10th January 1888. If the law tells a tenant that he is not bound to pay any person who is unregistered, it follows that it was not intended that an unregistered person should be able to sue him, not only to recover the amount of rent, but also the costs and possibly damages for non-payment.

6. In the present case, there appears to be really no question that the plaintiff was entitled, as widow of her late husband, to receive the rent payable by the defendant; and probably if the rent claimed had not been at an enhanced rate, the present objection would not have been taken. As it has been taken, we think we are bound by law to give effect to it.

7. The result is that that portion of the plaintiff's suit, in respect of which this appeal has been preferred, must be dismissed.

8. The appellant will be entitled to his costs in this Court on the sum at which this appeal is valued, and in the lower Court on the whole amount claimed by the plaintiff.