

(1892) 12 PRI CK 0003

In the Privy Council

Hemanta Kumari

APPELLANT

Vs

Surja Kant Acharya

RESPONDENT

Date of Decision : 16-12-1892

Acts Referred:

Citation : (1893) 21 ILRPC 498

Hon'ble Judges : Macnaghten, Hannen, Shand, R. Couch, JJ.

Judgement

R. Couch, J. 1. The suit in the first of these appeals was brought by Sarat Sunderi Debi, widow, executrix of the late Raja Jogendra Narain Roy, to recover from the appellant the rent at an enhanced rate for one year, ending on the 11th April 1882 of a separate ten-annas share of lands held by the appellant under a lease which was perpetual and heritable, but the rent of which was liable to be enhanced under the provisions of Act VIII of 1869 of the Bengal Council. Raja Jogendra Narain Roy, who was the owner of the ten-annas share, married Sarat Sunderi Debi, and after his death, the date of which does not appear in the proceedings, she adopted a son to him, named Kumar Jotindra Narain Roy, who married the respondent and is now dead. The first Court decided that the plaintiff was entitled to rent for the year at an enhanced rate, and made a decree for it fixing the amount. This decree was affirmed on appeal by the High Court. 2. The plaintiff stated that the plaintiff had the title to and the possession of the ten-annas share, which, by a partition of the zemindari, was recorded as No. 122 in the Collectorate of the district, and that the defendant had been paying to the plaintiff the old rent. The defendant, the present appellant, in his written statement took many objections to the suit, but Mr. Cowie, in opening the case for him, said that the only question for determination by their Lordships was whether the plaintiff had a right to bring the suit. This question was raised in the written statement, by the allegation that Jotindra Narain Roy, having come of age long before the institution of the suit, the plaintiff was not entitled to bring the suit in respect of the zemindari left by her husband. The first of the settled issues is: "Whether the plaintiff has a right to sue for enhancement?" Now the allegation in the plaintiff's statement that the defendant had been paying the old rent to the

plaintiff was not denied. Consequently the defendant could not dispute the plaintiff's title. He could only show that it had expired, and that therefore the plaintiff was not entitled to any rent. In addition to his written statement, the defendant, in a petition filed on the 5th December 1883, in answer to a petition filed by Jotindra Narain Roy for the substitution of his name for that of the plaintiff, said that the plaintiff was the owner only during the son's minority, and that, as the son attained majority before the institution of the suit, she had no right to bring it. Construing the issue with the written statement and this petition, the question to be tried appears to be whether the son had come of age before the institution of the suit. This would be the question, whether the plaintiff was suing in her own right or as guardian of her minor son. It is unnecessary to consider the effect of the title to the plaint, where she is called "widow of the late Raja Jogendra Nath Roy, mother of Sriman Kumar Jotindra Narain Roy, minor," which may be consistent with her suing in either character. The plaint rather supports the view that she was suing in her own right. Two of the plaintiff's witnesses deposed on cross-examination to the age of Jotindra Narain Roy. The defendant did not give any evidence of it. A will of Jotindra Narain Roy, made when he admittedly was of age, referring to a previous will executed by him, was also relied upon. Their Lordships agree with the judgment of the High Court, which said that it was impossible to form any conclusion from the statement in the will, and impossible from the evidence of the witnesses to come to any reasonable conclusion as to his exact age, or that he had attained majority before the institution of the suit. Therefore the only question for their Lordships' determination must be decided in the plaintiff's favour, and their Lordships will humbly advise Her Majesty to affirm the decree of the High Court and to dismiss this appeal. 3. The suit in the second appeal is between the same parties, and was brought for enhanced rent of the property for the three subsequent years and part of a fourth year. The only defence relied upon before their Lordships was that the old rent and cesses for each of the three years were tendered to the plaintiff in proper time, and she not having accepted them they were deposited in Court under Act VIII of 1869, (Bengal Council), and the plaintiff brought no suit within six months of the date of the deposit, and so the claim for rent at an enhanced rate was barred by a special law of limitation. As to the part of the rent for the fourth year, the defence was that the rent was payable yearly and was not due. Section 46 of Act VIII of 1869 enacts that if any under-tenant or raiyat shall tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender, and if the amount so tendered shall not be accepted and a receipt in full forthwith granted, the under-tenant or raiyat may deposit the amount in the Court having jurisdiction to entertain a suit for the rent. By Section 47 the Court is to issue a notice to the person to whose credit the money has been deposited, and serve it. By Section 31 it is enacted that whenever a deposit on account of rent shall have been made no suit shall be brought against the person making the deposit on account of any rent which accrued due prior to the date of the deposit, unless the suit be instituted within six months from the date of the service of the notice required by Section 47. The

rent for the first of the three years became due on the 12th April 1883, for the second on the 11th April 1884, for the third on the 12th April 1885. The deposits were made on the 10th April 1883, the 8th April 1884, and the 11th April 1885, all before the expiration of the year when the rent became due. The words of the Act are plain that the deposit must be of rent which accrued due prior to the date of the deposit. They do not admit of any other construction. The first Court disallowed the rent for the part of the fourth year on the ground that it was not due, and made a decree for rent for the three years at the rate which had been fixed for the year in the previous suit. The High Court, on appeal, affirmed that decree, and their Lordships will humbly advise Her Majesty to affirm the decree of the High Court, and to dismiss this appeal. 4. The appellant will pay the costs of the appeals.