

(1938) 04 CAL CK 0008
In the Calcutta High Court

Hrishikesh Chakravarty and Others

APPELLANT

Vs

Nil Madhab Chattopadhyaya and Others

RESPONDENT

Date of Decision : 26-04-1938

Acts Referred:

Bengal Tenancy Act, 1885 — Section 153

Citation : AIR 1938 Cal 543

Hon'ble Judges : Patterson, J

Bench : Division Bench

Judgement

Patterson, J.—This rule has been issued in connexion with a suit for rent. The suit was valued at Rupees 19.5-3. The Munsif before whom it was tried had final powers u/s 153, Ben. Ten. Act. The learned Munsif decreed the suit, but the learned District Judge on appeal reversed the decision of the Munsif and dismissed the suit. This rule is directed against the order of the District Judge and has been granted on the ground that the latter had no jurisdiction to entertain the appeal. A preliminary objection has been taken on behalf of the opposite parties on the ground that an appeal lay to this Court against the order of the learned District Judge and that the rule is therefore not maintainable. In these circumstances two questions arise for consideration, namely whether in view of the provisions of Section 153, Bengal Tenancy Act an appeal lay to the District Judge from the decree of the learned Munsif and: whether in view of the provisions of that section an appeal lies to this Court from the decree of the learned District Judge. In other words, it has to be decided whether the learned Munsif on the one hand or the learned District Judge on the other has "decided the question relating to the title to land or to some interest in land as between parties having conflicting claims thereto."

2. The land in suit was the homestead land of one Megaram and formed the southern part of plot No. 124 of Gopaldi mouza. The plaintiffs were the superior landlords and their case was and is, that they purchased Megaram's interest in the land in suit in 1327 B. S. by a kobala and thereafter re-settled it with

Megaram by taking a kabuliat from him and that after the re-settlement with Megaram they realised rent from him by a suit. The plaintiffs' case is further that in 1340 B. S. Megaram transferred his rights in the land to the defendants by a kobala and that the defendants have thus stepped into Megaram's shoes and have become their tenants in respect of the land in suit. The defendants denied having purchased the land in suit from Megaram by the kobala of 1340 and also denied that they were in possession of that land. They did not apparently challenge the plaintiffs' title to the land in suit, but they repudiated the relationship of landlord and tenant in respect of that land. The learned Munsif accepted the plaintiffs' contention (with some reservations regarding the area of the land in suit and certain other matters), and found that the defendants had been in possession of that land as tenants under the plaintiffs and were therefore liable for the rent. The learned Judge on the other hand found that the defendants had not purchased the land from Megaram and that they were not in possession thereof; or in other words, that the relationship of landlord and tenant did not exist between the parties. From what has been said above it will appear that the Courts below had to consider and decide a question relating to the title to the land in suit, namely the question whether the defendants had or had not acquired the land by purchase from Megaram. It is however equally clear that in the present proceedings that question did not fall for decision between parties having conflicting claims in the land in suit, inasmuch as the plaintiffs' title was not denied by the defendants. It may well be that there is in fact a dispute regarding the title to the land between the plaintiffs, the defendants and Megaram, but that question did not fall for decision and was not decided in the present proceedings as between parties (having conflicting claims in the land, inasmuch as Megaram was not a party to these proceedings).

3. In this view of the matter it must be held that no appeal lay from the decree of the learned Munsif, and that the decree of the learned District Judge was without jurisdiction. In these circumstances an appeal would lie to this Court from the decree of the learned District Judge, so far as the provisions of Section 100, Civil P.C. are concerned, on the ground that the decision of the learned Judge was contrary to law having been made without jurisdiction. Section 153, Ben. Ten. Act, however stands in the way, and it appears to be settled law that when a decree has been passed without jurisdiction, an appeal lies precisely in the same way as if it had been made with jurisdiction: *Gangadhar Karmakar v. Shekhar Basini Dasya* AIR (1917) Cal 320 and *Bandiram Mookerjee v. Puma Chandra Roy* AIR (1918) Cal 435. If the decree of the learned District Judge had been made with jurisdiction, it would have been non-appealable by reason of the provisions of Section 153, Ben. Ten. Act, and it is therefore, non-appealable even though it was made without jurisdiction. The preliminary objection therefore fails and it must be held that the decree of the learned District Judge is liable to be set aside on the ground that he had no jurisdiction to entertain the appeal.

4. The learned advocate for the opposite parties contends that the plaintiffs' case has no merits, and that the order of the learned Munsif was clearly wrong

and that of the learned District Judge right. In these circumstances, he contends that this is not a case in which the discretion of this Court u/s 115 should be exercised in favour of the petitioners. He has drawn my attention to the decision in the case in Mt. Kuti Baru Bibi Vs. Jitendra Nath Roy and Others, , in which a learned Judge of this Court sitting singly refused to exercise his discretion u/s 115 in somewhat similar circumstances. I do not propose to criticize that decision, but without at all considering or expressing any opinion with regard to the merits, it seems to me that this is clearly a case in which the order complained of ought to be set aside on the sole ground that it was made without jurisdiction. The policy underlying Section 153, Ben. Ten. Act, is clearly that the decision of the trial Court should be final in cases to which that section applies and that in such cases neither the landlord nor the tenant should be harassed, and the proceedings protracted by the exercise of a right of appeal. To allow the decree of the learned District Judge to stand in spite of the fact that it was made in clear contravention of Section 153, would be to defeat the object of that section. If the opposite parties are aggrieved by the Munsif's decision, they can, if so advised, seek their remedy in some other way-they have no remedy by way of appeal. It has also been pointed out to me on behalf of the opposite parties that the petition of appeal before the learned District Judge contained an alternative prayer that the District Judge should if necessary exercise the powers of revision with which he is vested under the provisions of Section 153. As the District Judge entertained the appeal and decided it in favour of the opposite party, he had no occasion to exercise his revisional powers. Considering the matter from that point of view I am satisfied that there was nothing in the decision of the learned Munsif which would have enabled the District Judge to interfere in revision. No order is therefore necessary in respect of that portion of the opposite parties' prayer to the learned District Judge. The result is that this rule is made absolute. The judgment and decree of the learned District Judge are set aside and those of the learned Munsif are restored. The petitioners will get their costs in this Court, the hearing fee being assessed at one gold mohur. They will also get their costs in the Court of the learned District Judge.