

(1943) 01 CAL CK 0015
In the Calcutta High Court

Jharuram Das Monda

APPELLANT

Vs

Hajar Mohammad Sheik Fakir and Others

RESPONDENT

Date of Decision : 12-01-1943

Acts Referred:

Bengal Tenancy Act, 1885 — Section 48

Citation : AIR 1944 Cal 13

Judgement

1. This appeal arises out of a suit for rent at Rs.144 per year together with cesses. The suit was decreed by the trial Court at the rate claimed but on appeal the learned Additional District Judge of Dinajpur allowed the plaintiff a decree at the rate of Rs. 88-12-0 per year only plus cess for the three years in suit. The defendants were able to show that in a previous rent suit (no. 14 of 1930) the plaintiff had claimed at the rate of rs. 150 per year but had obtained a decree at the rate only of Rs. 88-12-0, the reason for that decision being that the tenancy of the defendants having come into existence prior to the amendment of Section 48, Bengal Tenancy Act, which came into force in 1929, the amended section had no application to the case and accordingly the plaintiff is not entitled to more than 25 per cent, in excess of the amount of Rs. 31 paid by himself as rent to his landlord. Subsequent to this decree the plaintiff brought two other suits, No 27 of 1938 and No. 3569 of 1934, claiming rent at the rate of Rs. 88-12-0. The substantial point in issue therefore before the lower Courts was whether the previous decree in 1930 operated as res judicata. It was conceded that by subsequent decisions of this Court it had been held that the amended Section 48 would apply even to tenancies created before it came into force. The trial Court took one view while the lower appellate Court took the view detrimental to the plaintiff's case, namely, that the previous decree did in fact operate as res judicata.

2. In this Court the point was at first pressed in this form and various arguments were put forward in Order to distinguish the case in some way from the decision of Rankin C. J., in the Full Bench case in Tarini Charan Bhattacharjee and Others Vs. Kedar Nath Halder, , In that case a distinction was made between the case in

which a previous decision had been shown to be erroneous as a result of later decisions of the superior Court and the case in which there had been a change in law made by the Legislature. The judgment of Maclean Alimunnissa Chowdhurani v, Shama Charan Roy 32 Cal. 749: 1 C. L. J. 176: 9 C. W. N. 466, in which the learned Chief Justice had held that there was no difference between the two cases was discussed and dissented from. In the course of argument in this Court attention of the parties was drawn to Section 47A which was inserted in the Bengal Tenancy Act by the Amending Act, namely, Act 6 of 1938. The terms of the section are:

The provisions of this chapter shall apply to all under-raiyats whether their tenancies were created before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928.

3. The effect is that the decision in Tarini Charan Bhattacharjee and Others Vs. Kedar Nath Haldar, , changes from the position of being used by the respondents in support of their contentions and becomes one which supports the case of the plaintiff. The change in law from that under which the ease of 1930 was decided has been made by the Legislature subsequent, to that case. Mr. Nausher Ali appearing on behalf of the respondents has suggested with some ingenuity that in fact there has been no change in the law brought about by the amended section which merely confirms the view finally taken by this Court in various decisions on the question as to the applicability of Section 48, Ben. Ten. Act, to tenancies created prior to the amendment. A reference to the cases cited in the Bengal Tenancy Act by Mr. A. C. Ghose, 3rd Edn., shows that for some time there was some divergence of opinion in this Court with regard to this very question and indeed the matter must necessarily have been one giving rise to some doubts in view of the special wording to be found in Section 48 which prima facie seems more suited as referring to cases only in which the under-raiyati in question is created after that section came into force, for the phrase used is "when an under-raiyat is admitted to the occupation of land." Moreover, it is evident that the Legislature thought that there was some need to clear up the law on the question of retrospective effect of the amendments in chap. 7. In my opinion, even apart from the fact that there was some divergence of opinion in this Court, there has definitely been a change in the law as it stood on the statute book at the time when the case of 1930 was decided and as it stands now, for the words of Section 47A have been added to the statute book. In my opinion, that is sufficient to attract the principle referred to in Tarini Charan Bhattacharjee and Others Vs. Kedar Nath Haldar, , that has been well-established, and the result is that the decision in the rent suit of 1930 based as it was on a view that the amended Section 48 did not apply to the tenancy in suit is no longer binding between the parties. Once the decision of 1930 is removed, there can be no doubt as to what the plaintiff is entitled, namely he is entitled to claim the amount contracted for by the defendants, that is to say, us. 144.

4. Mr. Nausher Ali has urged on behalf of the respondents in the case to send the

case back for disposal by the lower Court and that he should be allowed to raise the defence that the rent should be diminished on the ground that the defendants had been dispossessed from some portion of the land. In support of this he refers to the judgment in the previous suit of 1930 where this defence was taken and it was explicitly stated that the point was left open. The point was not taken in the present suit in the written statement at all although the plaintiff claimed for the full amount according to the contract. Again, it was not taken in the grounds of appeal although the plaintiff succeeded in his claim. I do not think the respondents can now be allowed to raise this defence. The result is that the appeal is allowed, and the decree of the lower appellate Court is set aside and the decree of trial Court is restored. There will be no Order as to costs in this appeal, or in the lower appellate Court.