
(1912) 09 CAL CK 0007
In the Calcutta High Court

Jogendra Nath Singh and Others

APPELLANT

Vs

Secretary of State for India

RESPONDENT

Date of Decision : 05-09-1912

Acts Referred:

Bengal Tenancy Act, 1885 — Section 104H

Citation : 17 Ind. Cas. 921

Hon'ble Judges : Holmwood, J; Ashutosh Mookerjee, J

Bench : Division Bench

Judgement

Ashutosh Mookerjee, J.—This appeal is directed against an order of remand in a suit u/s 104-H of the Bengal Tenancy Act. The plaintiffs instituted the suit on the ground mentioned in Sub-section 3, Clause (e) of that section, namely, that as tenants they belong to a class different from that to which they are shown in the Record of Rights as belonging. The substantial relief which they claimed, in fact it is the only relief which they can claim under Sub-section 1 of Section 104-H, is, that the amount of the rent settled at the present settlement is excessive and illegal and that fair and equitable amount of rent be settled. On behalf of the Secretary of State for India in Council, objection was taken to the frame of the suit on the ground that the under-tenants subordinate to the plaintiffs had not been joined as defendants. This objection was overruled by the primary Court; the suit was tried on the merits and decreed in favour of the plaintiffs; the decree declared that the status of the plaintiffs was that of ryots with rights of occupancy and not that of intermediate tenure-holders. The Secretary of State appealed against this decision, and contended that the under-tenants should have been joined as defendants, because their status is dependent upon the status of the plaintiffs. The District Judge has given effect to this contention, upon the authority of the cases of Pajiruddin v. Secretary of State 16 C.L.J. 383 : 17 Ind. Cas. 919 and Digambar Nanda v. Secretary of State 16 C.L.J. 381 : 17 Ind. Cas. 917 The District Judge has, in this view, set aside the decree of the Court of first instance and remanded the case in order that the under-tenants might be added as defendants and the suit re-tried in their presence. This appeal

by the plaintiffs is directed against the order of remand, and has been supported on the ground that in a suit u/s 104-H of the Bengal Tenancy Act, the under-tenants of the plaintiffs are not necessary parties.

2. Before the substantial question of law raised in the appeal is examined, it is necessary to point out that the plaint has not been framed properly for the purposes of a suit u/s 104-H of the Bengal Tenancy Act. Sub-section 1 of that section provides that any person aggrieved by an entry of a rent settled in a Settlement Rent Roll, prepared under Sections 101-A to 104-F and incorporated in a Record of Rights finally published u/s 103-A or by omission to settle a rent for entry in such Settlement Rent Roll, may institute a suit in the Civil Court. The sub section specifies the Court where the suit may be instituted, namely, it is the Court which has jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made. Sub-section 2 limits the time within which the suit may be instituted. Sub-section 3 specifies the grounds on which the suit may be instituted, and it is stated explicitly that on no ground other than those specified in the sub-section can the suit be maintained. It is plain, therefore, that the only relief which the plaintiff in a suit u/s 104-H can claim is the alteration of an entry of the rent settled or the insertion of an entry as to the amount of rent to be settled. When we examine the plaint in this case, in view of this exposition of the scope of Section 104-H, we find that the first two prayers are entirely out of place. The first prayer is to the effect that the plaintiffs may be declared occupancy ryots and that the entry in the Record of Rights to the effect that they are tenure-holders may be declared erroneous. The second prayer is to the effect that the names of two of the defendants who are recorded as occupancy ryots in the Record of Rights may be expunged therefrom and the lands in their occupation may be recorded in the khatian as the nij jote of the plaintiffs. The third prayer is to the effect that the amount of the rent settled at the present settlement is excessive and illegal and that a fair and equitable amount of rent may be settled. The fourth prayer relates to costs, while the fifth embodies the usual general prayer for such relief as the plaintiffs might be entitled to claim in accordance with law and equity. It is plain that the first two prayers are entirely foreign to a suit properly framed u/s 104-H of the Bengal Tenancy Act. No doubt, the Court, with a view to determine the question, whether the entry of the rent as settled is erroneous or whether there ought to be an entry of settled rent, must incidentally examine the ground assigned by the plaintiffs as set out in the six clauses of Sub-section 3. But the Court cannot be called upon, in a suit u/s 104-H, to make an express declaration upon any of the six matters mentioned in that sub section. The second prayer is, if possible, still more foreign to the scope of the suit. The plaintiffs are not competent to seek in a suit u/s 104H a declaration that part of the lands is nij jote or that certain specific tenants have not acquired rights of occupancy therein, It is a matter for surprise that these patent defects in the plaint were not noticed in either of the Courts below, and, as a matter of fact, here also they were not discovered till the plaint had been examined by ourselves. If objection

had been taken by the defence at the, earliest stage, as it might and ought to have been taken, and if, notwithstanding the exception, the plaintiffs had persisted and proceeded to trial with the plaint as framed, they would not have been entitled to any consideration at the hands of the Court. Here, however, the defect was discovered by us, and as soon as attention was drawn to it, the learned Vakil for the appellants asked for permission to amend the plaint. Under the exceptional circumstances of this case, I think this application may be granted, specially as the learned Government Pleader did not seriously oppose the application. The first two prayers in the plaint will, consequently, be expunged, and the names of all the defendants other than the Secretary of State will also be removed from the record. The plaint as thus amended, is a proper plaint in a suit u/s 104-H of the Bengal Tenancy Act. The question arises, whether in a suit framed strictly in accordance with Section 101-H, the under-tenants are necessary parties.

3. It is worthy of note that Section 104H of the Bengal Tenancy Act does not state expressly against whom the suit under Sub-section (1) may be instituted. The reason for this omission is obvious. The suit may be instituted not merely by a tenant but also by a landlord. This is clear from an examination of the six grounds mentioned in sub Section 3. Ground (a), namely, that the land is not liable to the payment of rent, can be taken only by the tenant. Ground (6), namely, that the land though entered as rent free is liable to the payment of rent, can be taken only by the landlord. Ground (c), namely, that the relation of landlord and tenant does not exist, can be taken either by the landlord or by the tenant. Ground (d), namely, that the land has been wrongly recorded as part of or omitted from a particular estate or tenancy, may be taken by either party. Ground (e), namely, that the tenant belongs to a class different from that in which he has been placed in the Record of Rights, may be urged either by the landlord or by the tenant. Ground (f) which relates to the date from which the rent settled is to take effect, may be taken either by the landlord or by the tenant. It is manifest, therefore, that a suit u/s 104-H may be instituted either by the landlord or by the tenant, according as the one or the other considers himself aggrieved by the entry in the Record of Rights. Against whom, then, should the suit be instituted? Clearly, against the person in whose favour the entry of rent settled has been made or who has been benefited by the omission to settle a rent for entry in the record. Tested in the light of this principle, a suit u/s 104-H should have as defendant only the person benefited by the rent-entry or by the omission to make a rent-entry, as the case may be. In the present case, therefore, the Secretary of State for India is the proper party to be made defendant. The under-tenants are not necessary parties in the determination of the one question directly in issue, namely, whether the rent-entry showing the amount of rent payable by the plaintiffs to the Secretary of State, is or is not correct. In the Court below, it appears to have been argued, however, that the under-tenants are necessary parties, because they are interested in the question which incidentally arises as to the status of the plaintiffs. The obvious answer is

that they cannot be affected or prejudiced in any manner by the result of this suit, to which they are not parties; the entry in the Record of Rights, in so far as it relates to their status as under-tenants cannot be altered as the result of this suit. There is a well-founded distinction between necessary parties and proper parties to a suit. The Code of Civil Procedure, 1908, does not contain any express provision as to who should be considered necessary parties, but it is clear from an examination of the rules in Order I of the Code that two conditions must be satisfied in order that a party may be considered a necessary party defendant, namely, first, there must be a right to some relief against him in respect of the matter involved in the suit, and, secondly, his presence is necessary in order to enable the Court, effectually and completely, to adjudicate upon and settle all the questions involved in the suit. *Durga Charan Sarkar v. Jatindra Mohan Tagore* 27 C. 493 at p. 497. As pointed out, however, by Story in his classical treatise on Equity Pleadings, Section 76(e), it is impossible to formulate precise rules of universal application to the joinder of parties, and the only principle which can be safely adopted is that all persons materially interested in the suit or in the subject of the suit or in the object of the suit should be made parties. To the same effect is the exposition by Calvert in his *Treatise on Parties to Suits in Equity*, Second Edition, 1847, pages 1-11, where statements are quoted from the judgments of Lord Hardwicke, Lord Thurlow, Lord Eldon and Sir William Grant, and it is pointed out that the rule is expressed in vague language by very logical reasoners. The rule is formulated in the same terms in *Daniell on Chancery Practice*, Vol. I, page 263, where it is pointed out that all persons materially interested in the subject should generally be made parties to the suit, either as plaintiffs or defendants (See also *Daniell*, Vol. I, pages 170, 171, 200, and *Story on Equity Pleadings*, Sections 76, 94, 120, 138). In each case, it must be determined whether a particular person is or is not a necessary party, i.e., necessary for the determination of the question raised by the plaintiff and for the grant of the relief he claims. It may be laid down, however, as a general rule that a person who is only indirectly or remotely interested, is not a necessary party. In illustration of this principle, reference may be made to the cases of *Moser v. Marsden* (1892) 1 Ch. 487 : 61 L.J. Ch. 319 : 66 L.T. 570 : 40 W.R. 520 and *MoCheane v. Gyles* (1902) 1 Ch. 911 : 71 L.J. Ch. 416 : 50 W.R. 387 : 66 L.T. 217 and in England it has been ruled that an order for the addition of a defendant would be made only where, before the Judicature Act, a plea in abatement would have succeeded. *Wilson v. Balcarres Brook Steamship Co* (1893) 1 Q.B. 422 : 62 L.J.Q.B. 245 : 4 K. 286 : 68 L.T. 312 : 41 W.B. 486 : 7 Asp. M.C. 321; *Robinson v. Geisel* (1894) 2 Q.B. 685 : 64 L.J.Q.B. 52 : 9 Rule 555 : 71 L.T. 70 : 42 W.R. 609. That there may be room for divergence of judicial opinion on the subject is well illustrated- by the judgment of Sir Barnes Peacock in *Joy Gobind Dass v. Gouree Porshad Shah* 7 W.R. 201 and of Mr. Justice Markby in *Kaliprasad Singh v. Jainarayan Roy* 11 W.R. 361 : 3 B.L.R.A.C. 24. It is worthy of note that Rule 9 of Order I of the CPC now provides that no suit shall be defeated by reason of the non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the

rights and interests of the parties actually before it, a rule well recognised and frequently applied in England. In *re Brown* (1861) 29 Beav. 401; 7 Jur. (N.S.) 650; 9 W.R. 430; 131 R.R. 641. A good illustration is furnished by the decision of their Lordships of the Judicial Committee in *Durga Prasad Singh v. Brojanath Bose* 39 I.A. 133 : 15 C.L.J. 481 : 15 Ind. Cas. 219 : 16 C.W.N. 482 : (1912) 1 M.W.N. 425 : 11 M.L.T. 337 : 9 A.L.J. 462 : 14 Bom. L.R. 445 : 23 M.L.J. 26 : 39 C. 693. In that case, a suit was brought by a zemindar to establish his right to minerals under-lying a mouza in his zemindary held by a Digwar on Digwari tenure. The Digwar was appointed by and was in possession under the authority of Government. It was contended that the Secretary of State was a necessary party to the suit. In answer, it was argued that the Secretary of State was not a necessary party, and that on the authority of the cases of *Kashi v. Sadashiv* 21 B. 229; *Van Geldar v. Sowerby Bridge Flour Society* (1890) 44 Ch. D. 374 : 59 L.J. Ch. 583 : 63 L.T. 132 : 38 W.R. 625; *Fergusson v. The Government* 8 W.R. 232; and *Mutty Lall v. Deshkar Roy* 9 W.R. 1 the Court might try the matters in controversy as between the parties to the suit. The Subordinate Judge held that the Secretary of State was not necessary party; upon appeal, the High Court held *Brojanath Bose v. Durga Prasad Singh* 34 C. 753 at p. 772 : 5 C.L.J. 583 that the Secretary of State was a necessary party, because the Government had asserted a right to the lands and might be affected, indirectly, at any rate, by the result of the litigation. The Judicial Committee reversed the decision of the High Court. Lord Macnaghten observed that the Secretary of State was not a necessary or even a proper party to the suit, and that the rights of the Government, whatever they were, would not be prejudiced or affected by the result of a suit to which it was not a party. The case before us is reasonably free from difficulty. The plaint as now amended is a plaint appropriate to a suit u/s 104-H of the Bengal Tenancy Act. The only question directly and substantially in issue in the suit so framed, is, whether the entry of the rent settled as payable by the plaintiffs is too high; that rent is payable only to the Secretary of State. Consequently, the under-tenants are not necessary parties to the suit. The view I take is not in conflict with that adopted in the cases of *Pajiruddin v. Secretary of State* 16 C.L.J. 383 : 17 Ind. Cas. 919 and *Digambar Nanda v. Secretary of State* 16 C.L.J. 381 : 17 Ind. Cas. 917. In both those cases, the plaints were not in strict conformity with the requirements of Section 104-H of the Bengal Tenancy Act, and declarations were sought which could not have been granted in a suit properly framed under that section. It may finally be added that if the contention of the respondent were to prevail, in suits for enhancement of rent u/s 7 or Section 30 of the Bengal Tenancy Act, the under-tenants might have to be joined as defendants. Let us take two concrete illustrations. Suppose a suit is brought by A. for enhancement of the rent of his tenant, B., on the allegation that B. is tenure-holder. B. contends that he is an occupancy raiyat and his rent is not liable to be enhanced u/s 7 of the Bengal Tenancy Act. The Court is necessarily called upon to determine the status of B. On what principle can it be suggested that the under-tenants of B. should be joined as defendants, though their status necessarily depends upon the status of B.? They are not interested in the

question of the amount of rent payable by B. to A. and their status cannot be affected by a decision in the suit to which they are not parties. Suppose, again, that A sues B. for an enhancement of rent on the allegation that B, is an occupancy ryot. B. pleads that he is a tenure-holder and not liable to have his rent enhanced u/s 30; it would certainly be a novel proposition to hold that all the sub-tenants of B. should be made parties to the suit, because the question of the status of B. is in controversy, and their status is dependent upon the status of B. On the whole, therefore, I am of opinion that in the present suit the under-tenants are not necessary parties.

4. The result is that this appeal must be allowed, the order of the District Judge set aside and the case remitted to him in order that the appeal may be heard on the merits. The plaint will be amended by the removal of the names of all the defendants other than the Secretary of State, and the first two prayers will be expunged. The appellants must, however, pay the respondents the costs of this appeal. The hearing fee is assessed at three gold mohurs, to be divided equally between the Secretary of State and the other defendants who are now discharged from the suit.

5. It is conceded that this judgment will govern the other appeal which will, therefore, be allowed on the same terms, and a similar order will be drawn up therein.

Holmwood, J.

6. I am in entire agreement with my learned brother as to the order which should be passed in this appeal, but as I was a party to the judgment in *Pajiruddin v. Secretary of State* 16 C.L.J. 383 : 17 Ind. Cas. 919 I think it right to add that those cases can be readily distinguished partly on the grounds already referred to in the judgment of my learned brother and also on the further ground that no amendment of the plaint was suggested and the parties desired and intended to have the status of the tenants determined. No doubt, it would have been competent to us to hold that the suit thereby ceased to be one u/s 104-H, but this was unnecessary as no change in jurisdiction was involved in trying the suit as a regular suit on the issues raised by the parties and the necessary payment of ad valorem fees had already been made. The true rule, however, seems to be that such issues cannot be raised in a suit u/s 104H so as to affect the rights of absent and unnecessary parties.

7. The later decision *Digambar Nandi v. Secretary of State* 16 C.L.J. 381 : 17 Ind. Cas. 917 by Coxe and Teunon, JJ., seems merely to have held that the under-tenants were desirable parties if they wanted to come in and not that the suit was bad in their absence.

8. I take it that the clear exposition of the law now given by my learned brother will remove any difficulty which might have arisen in the application of these two rulings.

9. I concur in the order passed in this appeal as to the remand after amendment of the plaint and as to costs.