
(1925) 02 CAL CK 0045
In the Calcutta High Court

Kanak Kanti Roy Choudhury

APPELLANT

Vs

Srishtidar Mondal and Another

RESPONDENT

Date of Decision : 17-02-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 46

Citation : 88 Ind. Cas. 670

Hon'ble Judges : Mukerji, J;Ewart Greaves, J

Bench : Division Bench

Judgement

Ewart Greaves, J.—This Rule was issued on the 2nd January 1925 at the instance of the plaintiff in the suit. On the 11th January 1924 the petitioner who is the plaintiff in the suit instituted this suit in the Court of the Second Munsif at Basirhat under Section 46 of the Bengal Tenancy Act "for enhancement of rent and for khas possession of the holding after ejectment of the tenant in case of refusal by the latter to agree to pay the rent which might be determined By the Court to be fair and equitable." I am quoting the actual words of the petitioner as it will show the nature of the suit in the plaintiff's view. For, it has been argued before us that the suit being one merely for ejectment does not fall within the provisions of Section 111 of the Bengal Tenancy Act. But it will be seen from the statement of the case itself as taken from the petition as indeed from the words of Section 46, that the suit although in one sense it is a suit for ejectment is not merely one for such a relief. The written statement was filed in the suit on the 11th March 1924 and on the 24th September in the same year a declaration was issued u/s 101 of the Bengal Tenancy Act notifying the preparation of the Record of Rights in respect of the area in which the land in suit was situated. On the 24th November 1924 the Munsif passed an order staying the Suits Nos. 8, 9, 10, 11, 12, 13 and 30 of 1924 under the provisions of Section 111 of the Bengal Tenancy Act until the final publication of the Record of Rights. It is against this order of the Munsif that the Rule is directed.

2. Two points have been argued before us on behalf of the petitioner the first is

that Section 111 has no application to a suit brought under the provisions of Section 46 of the Bengal Tenancy Act. It is said that the provisions of Section 111 relate to such suits as are brought under the provisions of Section 30 or Section 52 of the Tenancy Act of such like and not to a suit brought u/s 46. It was urged before us that the object of Section 111 was to prevent a conflict of decisions between the Revenue Officer and the Civil Court and that inasmuch as in the present case the Revenue Officer could not be called upon to fix a fair and equitable rent there was no chance of a conflict and, therefore, Section 111--had no application.

3. Now, Section 46 provides for the ejectment of a non-occupancy raiyat in certain events, that is to say, if the non-occupancy, raiyat has failed to execute the agreement tendered to him for the payment of enhanced rent under the provisions of Section 46 within three months. In case of such refusal the landlord is entitled to institute a suit to eject the tenant. But no order for ejectment can be passed until a fair and equitable rent has been fixed by the Court and the tenant has refused to pay the rent so determined by the Court. It is then and then only that a decree for ejectment can be passed. Consequently as I have already stated a suit u/s 46 is not merely a suit for ejectment in the sense of ejecting a trespasser, but it involves a determination by the Court of the class of the tenant and also the fixing of a fair and equitable rent. In the present case the landlord asserts that the tenant is a non-occupancy raiyat. The tenant asserts that he is a occupancy raiyat. Now, Section 111 provides that "when an order has been made u/s 101 directing the preparation of a Record of Rights then subject to the provisions of Section 104-H a Civil Court shall not...(b) where (as here) a Settlement of land revenue is not being made or is not about to be made--until three months after the final publication of the Record of Rights, entertain any application made u/s 158, or any suit or application for alteration of the rent or the determination of the status of any tenant in the area to which the Record of Rights applies." As I have already stated a suit u/s 46 involves determining of the status of a tenant and also involves the fixing of fair and equitable rent and it seems to me, therefore, that a suit u/s 46 comes under the express words of Section 111 of the Bengal Tenancy Act. It was urged before us that a suit u/s 46 being more than what a Revenue Officer would entertain and the object of Section 111 being to prevent a conflict between the Civil Court and the Revenue Officer the provisions of Section 111 have no application to, such a suit as the present one. But for the reasons which I have indicated I think they have. Having regard to the fact that there is a suit u/s 46 it is necessary to determine the status of the tenant and to fix fair and equitable rent. This was the first point which was urged before us.

4. The second, point Was that inasmuch as this suit had been instituted before the declaration u/s 101 was made the provisions of Section 111 had no application and it was. sought, to narrow the meaning of the word "entertain" to some such meaning as "to receive", that is, to; make the provisions of Section 111 applicable to suits instituted after the declaration u/s 101 had been made. I

see no reason to give so narrow an interpretation to the word "entertain." To entertain a suit or application to my mind merely means the consideration of a suit or application and equally applies to a instituted before the declaration is made and to suits instituted after such a declaration has been made. I respectfully agree with the reasoning contained in the judgment in *Pramada Nath Roy v. Basiruddin Quanji* 81 Ind. Cas. 993 : 28 C.W.N. 631 : 51 C. 230 : 40 C.L.J. 177 : AIR (1921) (C.) 704, where this point was considered.

5. The result is that we think both the reasons urged against the decision of the Munsif fail and that the Rule must be discharged with costs hearing-fee two gold mohurs.

Mukerji, J.

6. I agree.