

(1917) 01 CAL CK 0018
In the Calcutta High Court

Kshirod Gobinda Chowdhury and Others

APPELLANT

Vs

Rajendra Narayan Shaha

RESPONDENT

Date of Decision : 12-01-1917

Acts Referred:

Citation : 38 Ind. Cas. 94

Hon'ble Judges : Richardson, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—These are three appeals preferred by the plaintiffs against a decision of the learned Subordinate Judge of Pabna, dated the 23rd June 1914, affirming the decision of the Munsif of the same place. The suits were originally instituted under the provisions of Section 106 of the Bengal Tenancy Act. The Revenue Officer acting under the first proviso of that section transferred the suits to a competent Civil Court, the competent Civil Court being the Court of the Munsif. From that decision, appeals were preferred to the lower Appellate Court and from the decision of the lower Appellate Court the plaintiffs have appealed to this Court.

2. The first point that has been urged in these appeals is that the learned Subordinate Judge had no jurisdiction to hear the appeals from the decision of the Munsif in these cases. That seems to me to be an untenable argument. The cases having been transferred u/s 106 of the Bengal Tenancy Act to a competent Civil Court, the competency of the Civil Court would be ascertained under the CPC and the attributes of the competency of that Civil Court, namely, that its decision would be subject to certain rights of appeal, would follow from the transfer. The argument that has been put forward in these appeals on behalf of the plaintiffs-appellants, namely, that there could only be appeals in these cases to the Special Judge because the suits were instituted before the Settlement Officer has clearly no foundation on the wording of the Act.

3. The other point that has been raised is as to whether the tenants could claim the, benefit of the presumption arising u/s 50 of the Bengal Tenancy Act. These

tenants who have been entered in the Record of Rights as tenants holding at a fixed rate of rent appear to have purchased their holdings from the former tenants. The suits which we are now considering in appeal were brought to rectify the entries that these tenants were holding at a fixed rate of rent. The Record of Rights, was, therefore, clearly in favour of the tenants and, when the matter came on for hearing in the lower Appellate Court the Judge made this finding:--"The presumption of Section 103 B(5) is also in defendants' favour and the plaintiff has not been able to rebut it." Clearly, therefore, the Judge found, amongst other things, acting on the presumption u/s 103 B (5), that the tenants were raiyats. Having found that they were raiyats, he was entitled to address himself to the terms of Section 50(2). Section 50(2) enacts that "If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors-in-interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown that they have held at that rent or rate of rent from the time of the Permanent Settlement." Now, what appears in these cases is that, for many years prior to the purchase; by the defendants, rents had been paid, by the tenants at a uniform rate and that, for the eight or nine years that have elapsed since the purchase by the defendants, no payment of rent has been made. The Judge, therefore, found that the rent had not been changed during the twenty years immediately before the institution of the suits. In my opinion, the Judge was clearly entitled to do so. The decision in the case of Ahmed Ali v. Golam Guffoor 11 W.R. 432 : 3 B.L.R. App. 40, is clearly to that effect and, I think, that the following; remarks made by Mr. Justice Dwarkanath Mitter in the course of his judgment conclude the matter:--"We frequently find that in dealing with this presumption, the Courts below, instead of addressing themselves to the real question at issue, namely, whether the rent has been changed or not, confine their enquiry to one point, namely, whether one uniform rate has been paid or not. There may be cases in which a raiyat might not have paid his rents for many years prior to the institution of the suit for enhancement; but if there has been no change in the rent payable by him, he is not to be deprived of the presumption which the law has expressly laid down for his benefit. The payment at a uniform rate is one mode of showing that the tenure was held at a uniform rate; but what is only a particular mode of proceeding to the solution of a question ought not to be confounded with the question itself." These remarks seem to me to apply just as much to the terms of the present Act as to the Act of 1859 and the view of the, learned Judge whose opinion I have cited seems to me to be the only possible view to take upon the words of the section. That being so, the learned Subordinate Judge in these cases was clearly entitled to come to the conclusion as he did that, during the twenty years immediately before the institution of the suits, the defendants and their predecessors-in-interest had held at a rent or rate of rent which had not been changed from the time of the Permanent Settlement. Having made that finding under Sub-section (2) of Section 50, by virtue of the presumption contained in Sub-section (1) of

the same section, the tenants were deemed to have held at a rate of rent which had not been changed from the time of the Permanent Settlement and, as such, they were not liable to have their rents enhanced. That obviously comes within the definition of a raiyat holding at a fixed rate as mentioned in Section 4, Sub-section (3)(a). A tenant so holding is a raiyat holding at a rate of rent that is fixed in perpetuity. That being so, the decision arrived at by the learned Judge of the Court of Appeal below is, in my opinion, correct. The present appeals, therefore, fail and ought to be dismissed. The respondents in Appeals Nos. 3709 and 3710 are entitled to their costs in these appeals. There will be no order as to costs in Appeal No. 2955 as the respondent does not appear in that appeal.

Richardson, J.

4. I agree.