
(1908) 06 CAL CK 0003

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1258 of 1907

Maharaja Radha Kishore Manikya Bahadur

APPELLANT

Vs

Umed Ali

RESPONDENT

Date of Decision : 17-06-1908

Acts Referred:

Citation : (1908) 06 CAL CK 0003

Final Decision : Dismissed

Judgement

Doss, J.—This is an appeal by the Plaintiff in a suit for assessment of additional rent for additional area said to be comprised in a raiyati-holding, and for enhancement of rent of that holding on two fold grounds:--first, that the rent paid by the Defendant was below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages; and, secondly, that there has been a rise in the price of staple food-crops. The Defendant contested the suit on the ground that the claim for additional rent is barred by the judgment in a previous suit between him and the Plaintiff, that he is a raiyat holding at fixed rates, that he has been paying rent at a uniform rate since the time of the permanent settlement and that, therefore, the rent of his holding could not be enhanced.

2. After the institution of the suit, the Plaintiff applied for permission to withdraw the suit in so far as it claimed assessment of additional rent for additional area, and for enhancement of rent on the first of the two grounds with liberty to bring a fresh suit upon those two grounds. The Courts below have refused that permission. On the merits, the Courts below have held that the Defendant has succeeded in proving that he has been paying rent at a uniform rate for a period of twenty years immediately before the institution of the suit as well as before the framing of the record-of-rights of the estate in which his holding is situated and that consequently he is entitled to the benefit of the presumption laid down in sec. 50, sub-sec. (2) of the Bengal Tenancy Act, and that the Plaintiff has not been able to rebut that presumption by any evidence. Both the Courts below

have accordingly dismissed the Plaintiff's suit.

3. The Plaintiff has appealed and, on his behalf it has been contended that inasmuch as in the record-of-rights the status of the Defendant has been entered as a mere occupancy-raiyat he is by reason of the provisions of sec. 115 of the Act, precluded from invoking the aid of the presumption laid down in sub-sec. (2), sec 50 of the Act. This contention was raised in the Courts below but without success. Though there might possibly have been some plausible ground for the interpretation sought to be placed upon sec 115 by the learned vakil for the Appellant, if the section had not contained the word " thereafter,"--I think the presence of that word materially alters the meaning of that section. Some significance undoubtedly attaches to the word " thereafter " in the section; what that significance is will be shown later; It seems to me at present that the construction put upon the section by the learned vakil for the Appellant is inconsistent with the language of sec. 103B, sub sec (3) which enacts that "every entry in the record of rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect." According to the construction put upon sec. 115 by the Appellant, the meaning of that section is that, if the status of a tenant has once entered in the record of rights as an occupancy-raiyat, that entry shall not only be presumed to be correct until it is proved by evidence to be incorrect but that the presumption of the correctness of that entry is irrebuttable, and that it precludes the tenant from even showing that his status is that of a raiyat holding at fixed rates, by invoking the aid of the presumption laid down in sec. 50, sub-sec. (2). In the next place, if the contention of the Appellant were sound, the provisions of sec. 106 of the Act, in so far as they enable the tenant to institute a suit within three months from the date of the certificate of the final publication of the record-of-rights for the decision of any dispute between him and the landlord as regards, among other things, his status, will be wholly nugatory. That section provides in clear terms that notwithstanding an entry as to the status of a raiyat in the record-of-rights, if there is any dispute with regard to such entry, the tenant may, within a certain period, bring a suit before a revenue officer for a decision of that dispute; and the principal mode in which a tenant may be able to establish in that suit that he is a raiyat holding at fixed rates and not a mere occupancy-raiyat, is by calling in aid the benefit of the presumption laid down in sec. 50, sub sec. (2) of the Act, that is to say, that he has been paying rent at a uniform rate for a period of twenty years before the institution of the suit. Such a suit would be manifestly opposed to the provisions of sec. 115, if the construction of that section as contended for by the Appellant were allowed. If, then, the tenant, notwithstanding the provisions of sec. 115, has a right to bring a suit under sec. 106 to be declared that he is a raiyat holding at fixed rates, by invoking the benefit of the statutory presumption arising from uniform payment of rent for twenty years prior to the institution of the suit, the significance of the word " thereafter" in sec. 115 becomes perfectly apparent. It must refer to a period subsequent to the publication of the record-of-rights. And, this view gains

support from the case of *The Secretary of State for India in Council v. Kajimuddi* ILR 26 Cal. 617 (1899), where, at p. 622, the learned Judges observed that "sec. 115 seems to contemplate a case in which a raiyat is seeking to get the benefit of the presumption for a period subsequent to the time when the record-of-rights was framed." I am of opinion that the interpretation sought to be placed upon sec 115 by the learned vakil for the Appellant it is not well-founded.

4. It was next contended by the learned vakil for the Appellant that the Courts below are wrong in refusing to the Plaintiff permission to bring a fresh suit for assessment of additional rent on the ground of increase in the area of the holding. The Court of first instance was of opinion that; the Plaintiff would be debarred by the provisions of sec. 37 of the Act from bringing the present suit as it has been instituted within a period of fifteen years after his failure in a previous suit, for assessment of additional rent under sec. 52 of the Act. The Court of Appeal below, however, has not stated any reason why another suit under sec. 52 of the Act for assessment of additional rent could not be brought within a period of fifteen years from the decision in a previous suit of the same kind. But if the Court of Appeal below was of opinion that sec. 37 was a bar to such a suit, it seems to me that it was in error. The very nature of the claim in a suit under sec. 52, shows that such a suit may be brought after any interval of time, for instance, where the increase in the area of a holding is due to accretion or encroachment on the landlord's waste, there is no reason why assessment of additional rent for the additional area should not be allowed as often as there is such addition to the holding. But I think the Appellant is not entitled to ask for permission to institute a fresh suit under sec. 52, because if the suit is for assessment of additional rent on the same additional area which formed the subject-matter of the previous suit, the decision in the previous suit, operates as *res judicata*. If, however, the suit, is for assessment of additional rent for any additional area outside the area comprised in the previous suit, the cause of action of the latter suit would be different from the cause of action in the previous suit: and, hence, there is no need to ask for permission to bring a fresh suit. On these grounds I am of opinion that the judgments and decrees of the Courts below ought to be affirmed and this appeal ought to be dismissed with costs.