
(1949) 04 CAL CK 0011

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 286 of 1945

Monomohan Singha Ray

APPELLANT

Vs

Santosh Kumar De

RESPONDENT

Date of Decision : 28-04-1949

Acts Referred:

Citation : (1949) 04 CAL CK 0011

Final Decision : Allowed

Judgement

K.C. Das Gupta, J.—The Respondent was formerly the landlord of the Appellants, but, several years after his interest was sold away, he brought a suit against his former tenant for arrears of rent. This suit was brought more than three years after the date on which the amount fell due, but within three years from the last day of the agricultural year in which the arrears fell due. If, therefore, the period of limitation applicable is the period of three years "from the last date of the agricultural year when the "arrears fell due" as provided in Article 2(6) of Schedule III of the Bengal Tenancy Act, the suit is within time. If, on the contrary, this is not applicable, then it is beyond time and so liable to be dismissed.

2. The courts below held that the special law of limitation as laid down in the Bengal Tenancy Act was Article 2(6) of Schedule III, which is applicable in this case and consequently decreed the suit.

3. The sole point for decision in appeal is whether the special period of limitation is applicable. The actual words used in Article 2 make it applicable to suit brought by landlords. The question is whether, when a landlord has ceased to be a landlord, he can still get the benefit of the special provision. This question came up for consideration (sic) this Court in the year 1912 in the case of Balmukund Sahai v. Tarini Singh (1912) 16 C.L.J. 360 and it was held that the provisions of the Article applied to a suit for recovery of rent of a holding by on whose interest as landlord has ceased to exist before the institution of the suit, provided that the arrears claimed accrue due to him when he was the landlord of the Defendant. It is contended, however, by Mr. Sen on behalf of the Appellants

that this decision can no longer be considered to be good law in view of the decision of the Privy Council in the following year in the case of Forbes v. Maharaj Bahadur Singh ILR (1914) Cal. 926 : L.R. 41 IndAp 91. In that case their Lordships had to decide the question whether the right to bring a tenure or a holding to sale u/s 65 of the Bengal Tenancy Act continued in a person who had been landlord but has since ceased to be so. Their Lordships decided that the right to bring a tenure or a holding to sale u/s 65, being exclusively in the landlord, a person to whom certain rents are due and who obtained a decree therefor after he has parted with the property has no such right. It is to be noticed that Section 65 of the Bengal Tenancy Act does not itself say that the right is in the landlord only, but their Lordships decided, on a consideration of the different sections on the subject, that the right to bring (sic) tenure or a holding to sale u/s 65 appertains exclusively to the landlord and it was in view of this decision that they came to the further conclusion that, consequently, a person to whom certain rents were due and who obtained a decree therefor after he has parted with the property in which the tenancy is situate has no such right. It may be mentioned that in coming to the decision mentioned above in Balmukund's case (supra), reliance has been placed by this Court on the case of Maharaj Bahadur Singh v. Forbes ILR (1908) Cal. 737 which was reversed by the Privy Council, as mentioned above. The decision in the case of Balmukund loses much weight in view of this fact. On consideration of the observations of their Lordships of the Privy Council in Forbes's case (supra), I agree with the learned advocate for the Appellants that the view in Balmukund's case (supra) that, though a person has ceased to be a landlord, he will still have the benefit of the special law of limitation is no longer good law. If the principle as laid down by the Privy Council in Forbes's case is not to be ignored, it is not possible to follow the decision in Balmukund's case. Consequently, I feel constrained to hold that the Plaintiff could not in this case get the assistance of the special law of limitation as laid down in Article 2(b) of Schedule III of the Bengal Tenancy Act and that the suit, having been brought beyond three years from the date when the mount fell due, is barred by limitation.

4. I, therefore, allow the appeal and set aside the decrees and judgments of the courts below and order that the suit be dismissed.

5. The appeal is, therefore, allowed with costs in all the courts.