

(1925) 06 PAT CK 0039

In the Patna High Court

Mt. Bibi Wajibunnissa Begum

APPELLANT

Vs

Babu Lal Mahton and Others

RESPONDENT

Date of Decision : 18-06-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 46, 61, 62(2)

Citation : AIR 1926 Patna 42

Hon'ble Judges : Dawson-Miller, C.J; Macpherson, J

Bench : Full Bench

Judgement

Dawson-Miller, C.J.—The suit out of which this appeal arises was instituted by the Plaintiff on 4th May 1921 claiming rent from the defendants in respect of a holding of 7 bighas 5 cottas of land in Patna for the years 1325 to 1327 F. and for the Pous and Chait kists of 1328 F. together with damages at 25 per cent. per annum. The rent was claimed at the rate of Rs. 252-13-0 per annum.

2. The main defences to the action were (1) that the amount of rent recoverable was Rs. 102 per annum and that for the years 1325 to 1327-F. the rent at that rate had been deposited in Court under the provisions of Section 61, Ben. Ten. Act and a receipt obtained under the provisions of Section 62, Sub-section (2), and that the rent claimed for 1328 F. was not payable until Bhado in that year corresponding to September 1921, which date had not arrived when the suit was instituted, and, (2) that the suit was barred by limitation under the provisions of Schedule 3, Article 2(a), Ben. Ten. Act, having been brought more than six months after the date of service of notice of the deposit.

3. It appears that in 1917 the Plaintiff attempted to eject the Defendants as trespassers but it was decided by the High Court in April of that year that the status of the Defendants was that of non occupancy raiyats. The rent then payable was Rs. 102 per annum. On 13th July 1917 the plaintiff filed in Court an agreement under the provisions of Section 46, Ben. Ten. Act for the payment of an enhanced rent at the rate of Rs. 379 per annum and on 18th July, 1917 (9th Sawan 1324) the agreement was duly served on the Defendants. The Defendants

refused to execute the agreement and on 5th November 1917 the plaintiff instituted a suit before the Munsif of Patna for ejectment of the defendants u/s 46(6) of the Act. Under the provisions of Section 46, sub.Ss. (6) to (10) if the raiyat refuses to execute an agreement tendered to him under the earlier provisions of the section and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding. If the raiyat agrees to pay the rent so determined he shall be entitled to remain in occupation of his holding at that rent for a term 5 years from the date of the agreement but on the expiration of that term shall be liable to ejectment unless he has acquired a right of occupancy. But if the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment and a decree for ejectment so passed shall take effect from the end of the agricultural year in which it is passed. The suit for ejectment was not decided by the Munsif until 4th February, 1920 when he found that a fair and equitable rent for the holding was Rs. 252-13-0. On 12th February 1920 a notice was served on the defendants to accept and pay the rent found to be fair and equitable but they do not appear to have agreed to pay the rent at the rate found by the Munsif. The Munsif's judgment has not been produced before us but it may be assumed that he passed a decree for ejectment in accordance with the provisions of Section 46(8) of the Act. No steps however, were taken to eject the tenants and they remained in possession without any agreement to pay the rent determined by the Court. I think the plaintiff was entitled to put them to their election but she failed to do so, and no agreement was come to by the tenants to accept the new rent determined by the Court until a year later as will presently appear.

4. The defendants appealed from the Munsif's decision to the Subordinate Judge. On 19th September 1920 the appeal was dismissed. The defendants then preferred a second appeal to the High Court and applied for a stay of execution of the decree for ejectment. They were in this difficulty that if they refused to agree to pay the rent found equitable, they would be liable to ejectment before the decision of the High Court on appeal. If they agreed to pay the rent found equitable they considered, rightly or wrongly, that their appeal to the High Court could not proceed. In the result they agreed to pay the rent found fair and equitable by the Court stipulating that it should be subject to the result of their appeal then pending in the High Court. Their agreement is dated 10th February 1921, corresponding to 18th Magh 1328 F. The appeal in the High Court was decided on 3rd January, 1923, the decision of the lower Courts being affirmed and the appeal dismissed. Pending this litigation, the object of which was to fix a fair and equitable rent which the defendants could only refuse to pay under pain of being ejected, the defendants deposited in Court under the provisions of Section 61 of the Act the rent due at the old rate, namely, Rs. 102 per annum, a short time after the expiration of each of the three years 1325 to 1327 and notices of the deposit were served upon the plaintiff on each occasion shortly after the deposit was made. The notices of the deposits for 1325, 1326 and 1327 were served upon the plaintiff on 15th December 1918, 15th December 1919

and 24th December 1920, respectively.

5. The first question for determination is from what date is the enhanced rent payable. The plaintiff contends that u/s 46, Sub-section (7) the enhanced rent is payable from 18th July 1917, when the agreement mentioned in Sub-section (1) was served upon the tenants. Sub-section (7) reads as follows: "if the raiyat agrees to pay the rent so determined" (that is, the fair and equitable rent determined by the Court in a suit for ejectment mentioned in Sub-section 6), "he shall be entitled to remain in occupation of his holding at that rent for a term of 5 years from the date of the agreement under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy." Her contention is that the date of the agreement there mentioned has reference to the agreement tendered to the tenant under Sub-Section (1). It is urged that it would be unjust where the rent is below the fair and equitable rate and the landlord claims enhancement under the earlier clauses of the section to allow the tenant by refusing to pay an enhanced rent, to continue in possession at the old rate until a suit has been brought and a fair rent determined which, as in this case, might take a long time, and that once the fair rent has been determined by the Court it should take effect from the date when the enhancement was first claimed and an agreement tendered under the earlier clauses of the section. The defendants, on the other hand, contend that the date of the agreement in Sub-section (7) must refer to the earlier words of that Sub-section which contemplate an agreement by the raiyat to pay the rent determined by the Court. They point out that the agreement mentioned in the earlier Sub-Section (1) to (5) is merely a document tendered to the raiyat for execution which he may or may not execute at his option and that in fact, until executed, it is no agreement at all, and that if Sub-section (7) intended to refer to the date when that agreement was tendered, it would have said so. Moreover the document tendered would not bear any date until its actual execution. They further point out that under Sub-section (3) if the agreement referred to in sub-Ss. (1) and (2) had been accepted" and executed by the tenant it would not take effect until the commencement of the agricultural year next following, and there is no reason for supposing that where a raiyat agrees to accept the equitable rent found by the Court after a suit for ejectment, that agreement should take effect from an earlier date than would have been the case had he accepted the proposal put forward by the landlord before litigation took place. Moreover the agreement tendered u/s 46, Sub-section (1) was to pay rent at the rate of Rs. 379 and it would be unjust that having refused to pay that rent, but afterwards having accepted a smaller rate determined by the Court, he should have to pay the enhanced rent from the date when the larger rate was unjustifiably demanded. Much may be said on purely equitable grounds as to what the law ought to be, but we must interpret the section according to the natural meaning of the words, unless such interpretation would lead to a manifest absurdity which it may be presumed the legislature did not intend.

6. It may be observed that Section 46 refers to two separate and distinct matters. The first five Sub-sections contemplate an amicable enhancement of the

rent of a non-occupancy raiyat without litigation. The landlord proposes an enhanced rent and tenders to the raiyat an agreement to pay that enhanced rent which he may or may not execute at his option. If he accepts the proposal then the enhanced rent takes effect from the beginning of the next agricultural year. If he does not accept it then the landlord may sue for ejectment. The sixth and subsequent Sub-sections relate to the procedure to be adopted where a suit for ejectment has been brought. They provide that before ordering ejectment the Court shall determine what is a fair and equitable rent. If the raiyat refuses to pay the rent so found then he may be ejected, but it seems perfectly clear that he would not be liable for anything more than the original rent upto the date when he was ejected. If, on the other hand, he agrees to pay the rent so determined he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement. It seems to me clear that the date of the agreement there mentioned is the date when he agrees to pay the rent found by the Court. There would appear to be no more reason why he should pay that enhanced rent from an earlier date, if he accepts it, than there would be why he should pay an enhanced rent if he refuses to accept it and renders himself liable to ejectment. The agreement in this case was dated 10th February 1921, and in my opinion, the enhanced rent became payable from that date. The result is that unless the suit is barred by limitation the rent payable by the tenants was at the rate of Rs. 102 up to 10th February 1921 which corresponds to 18th March 1328 F. and the rent payable after that date is at the rate of Rs. 252-13-0. The learned Subordinate Judge considered that the enhanced rent was not claimable until 3rd January 1923 when the High Court finally dismissed the appeal in the ejectment suit. But it seems clear that the enhanced rent is payable at the latest from the date when the raiyat agrees to pay the rent determined by the Court. Sub-section (7) does not in terms say from what date the enhanced rent should be payable. It merely states that the raiyat shall be entitled to remain in occupation of his holding at the enhanced rent for a term of five years from the date of the agreement. But, as his liability to pay the enhanced rent only arises by reason of his agreement, it seems to me impossible to hold that he was under any liability to pay rent at the enhanced rent before that date.

7. The fact that the defendants did not in fact agree to pay the enhanced rent until a much later date than that on which they might have been put to their election appears to have been due to the failure of the plaintiff to insist upon her rights. She could have compelled the defendants to pay the new rent or submit to ejectment as soon as the Munsif's decision was given unless the Court ordered a stay, which would only be granted on terms protecting the plaintiff's rights. It remains to consider whether the claim is barred by the special limitation prescribed in Schedule 3 of the Act. If the limitation there prescribed applies to the facts of the present case then it is clear that the claim for rent for the years 1325 and 1326 F, is time-barred, for the notices of deposit for those years were served on 15th December 1918 and 10th December 1919

respectively. The notice of deposit of the rent for the year 1327 was served on 24th December 1920 and the learned Subordinate Judge considered that the claim for rent for that year was also barred. It appears to have escaped his notice, however, that the present suit was instituted within six months of 24th December 1920 namely, on 4th May 1921, and it was conceded in argument before us that the rent for that year is not barred.

8. The appellant, however, contends that the claim for rent for the two previous years is not time-barred on the ground that the requirements of Section 61, Ben. Ten. Act were not complied with. The section provides that in certain cases, which are applicable in the present instance, the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his holding an application in writing for permission to deposit in Court the full amount of the money then due. The application must state the grounds upon which it is made and shall contain certain particulars as to the name of the person to whose credit the deposit is to be entered and it shall be signed and verified in the manner prescribed by Section 52, Civil P.C. u/s 62, if the Court accepts the deposit, it shall give a receipt for it under the seal of the Court and the receipt so given shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid in the same manner and to the same extent as if that amount of rent had been received by the person entitled to it. It is pointed out on behalf of the appellant that as the rent was not deposited until the end of the year, interest became payable from the dates of the different kists in each year and the amount of interest was not deposited. It has been found that the rent was payable not at the end of each agricultural year but kist by kist and this is no longer disputed. It follows, therefore, that at the end of the year some interest would be due upon the unpaid instalments and as the interest was not deposited it is contended that the defendants cannot be taken to have made a valid deposit u/s 61, full amount of the money then due. The limitation only applies to cases where the deposit was made u/s 61, and if no deposit was made within the meaning of that section the limitation period cannot apply. The question for determination is whether the deposit made in the circumstances stated was a sufficient compliance with the section. The learned Subordinate Judge considered that even if the amount deposited fell short of the sum actually due to the landlord at the date of the deposit it was a sufficient compliance with the section. In support of his finding he relied upon the case of Sasibhusan Dey v. Umakanta Dey AIR 1915 Cal 306. In that case the previous decisions of the same Court were reviewed and meaning and effect of the section was considered at length. The Court consisting of Mookerjee and Beachcroft, JJ., held that, where there has been a bona fide deposit in respect of the whole amount due at the date of the deposit, and not; merely in respect of a portion thereof, the deposit is validly made under the section even though it should turn out that the whole amount due had not been deposited. In my opinion that case was rightly decided. The section appears to me to provide for the case of a bona fide deposit of what the tenant considers to be the full amount of the rent due at the time of deposit. The

deposit, however, must be in respect of the whole rent due and not in respect of a portion only. It may well happen that there is some difference between the landlord and the tenant as to the amount of rent payable. In such a case the landlord might refuse to accept a sum which he considers falls short of the rent payable.

9. One of the cases to which the section applies is where the rent has been tendered to the landlord and he has refused to accept it or grant a receipt. That might well happen where there was a bona fide dispute between the parties as to the actual amount payable. In the present case the tenants were contending that the rent was due at the end of the agricultural year and not kist by kist. If they were right in that contention no interest would be payable upon the earlier kists.

10. The bona fides of the tenants in this case has not been impugned although the Court has decided that the rent was payable quarterly and not annually. It seems to me that the intention of the legislature was that where a bona fide deposit has been made in respect of the whole rent due, then the matter must be decided by suit at the instance of the landlord within six months of the receipt of the notice. u/s 62, a receipt given for the sum deposited acts as an acquittance to the extent of the amount deposited and the landlord can take the deposit out of Court and sue for the balance if he contends that the total amount due has not been deposited, and I think that the intention was that in such a case the dispute between the parties should be promptly decided, otherwise the landlord cannot question the sufficiency of the amount paid into Court. If the Appellant's contention be accepted it would follow that Section 62 could not operate if the amount paid in were less by a few annas than the amount actually due and no valid acquittance could be given to the tenant. Again if the Appellant's contention be accepted it is difficult to see in what case the period of limitation prescribed would be effective, for if the whole amount actually due must be paid in, so as to create a valid deposit u/s 61, it follows that any suit by the landlord, whether brought within six months or at a later period to recover the rent, must prove infructuous and there is no necessity for prescribing a period of limitation. If on the other hand, the deposit of a smaller sum than that actually due is not a valid deposit within the meaning of the section, again the limitation prescribed is of no effect. In my opinion the case of *Sasibhusan Dey v. Umakanta Dey* AIR 1915 Cal 306 was rightly decided and applies to the facts of this case. I think the claim for rent for the years 1325 and 1326 is barred by limitation and for the year 1326 the plaintiff is entitled to recover kist by kist at the old rate of Rs. 102 with interest at 12 per cent, credit being given for the amount deposited. With regard to the rent for the two kists of 1328 this is also recoverable at the old rate up to the 10th February 1921 and after that date at the rate of Rs. 252-13-0 together with interest at 12 per cent. The defendants are willing that the amount paid into Court for the years 1325 and 1326, and which we are told is still in deposit, should be paid out to the plaintiff in satisfaction of the rent for those years notwithstanding the bar. There will therefore be an order that the sums deposited for the years 1325 and 1326 be

paid out to the plaintiff. She will also be entitled to take out of Court the deposit made for 1327 in part satisfaction of her claim for rent for that year. The decree of the lower appellate Court will be varied in accordance with the decision above arrived at. The appellant has failed upon each of the main points argued before us but has succeeded in so far as the rent for 1327 is concerned and has succeeded in part as to the date from which the enhanced rent shall be payable. She has gained little advantage in so far as the rent for 1327 is concerned as this has been found to be payable at the old rate and the sum deposited could have been taken out of Court by her at any time. In the circumstances I think that the parties should each bear their own costs of this appeal.

Macpherson, J.

11. I agree.