
(1913) 08 CAL CK 0031

In the Calcutta High Court

Case No : Appeal From Appellate Decree No. 4092 of 1910

Musstt. Hira Koer and Others

APPELLANT

Vs

Lachman Gope and Others

RESPONDENT

Date of Decision : 28-08-1913

Acts Referred:

Citation : (1913) 08 CAL CK 0031

Judgement

1. This appeal arises out of a suit instituted by the Plaintiffs-Appellants for settlement of fair and equitable rent of certain lands in the possession of the Defendants and for recovery of arrears of rents for the years 1313 to the 12-anna kist of 1316. The fair rent for the lands was stated in the plaint to be Rs. 53-10 with road-cess. The Defendants pleaded inter alia that the suit could not be entertained having regard to the provisions of sec. 111 of the Bengal Tenancy Act, that they were occupancy raiyats and the rent was Rs. 13-14-9. They also pleaded payment. The Court of first instance held that Rs. 9 per bigha was a fair and proper rent for the disputed land and gave a decree accordingly. On appeal the learned Subordinate Judge held that the suit was not maintainable, having regard to the provisions of sec. 111 of the Bengal Tenancy Act and accordingly dismissed the suit. The Plaintiffs have appealed to this Court.

2. The first contention on behalf of the Appellants is that the suit was not one for alteration of rent and sec. 111 of the Bengal Tenancy Act therefore had no operation. It appears, however, that the Plaintiffs' predecessor-in-title Tuntun Singh brought a suit for recovery of khas possession of the lands from the Defendants but the suit was dismissed on the ground that the Defendants were tenants of the lands and Tuntun Singh, therefore, could not get khas possession. In that suit the Defendants filed certain rent receipts stating that they held the lands at a certain jama. Those receipts were believed in the said suit. The learned Subordinate Judge relies upon that fact in the present case to show that the Defendants held at a certain rent which was less than what is claimed in the present suit by the Plaintiffs as fair rent, and that the present suit, therefore, is a suit for alteration of rent within the meaning of sec. 111 of the Bengal Tenancy

Act. It is contended on behalf of the Appellants that all that was decided in the previous suit was that the Defendants were tenants and the question what was the rent payable for the lands was not gone into nor decided in the previous suit, and the judgment in that case is not admissible in evidence upon the question of the rent at which the Defendants held the lands. But the Defendants in that litigation asserted that they held the lands at a certain rent and we think that fact is admissible in evidence. Besides the finding in that suit, that the Defendants held the lands as tenants under Tuntun Singh, itself implies that they held at a particular rent (it being no part of Tuntun Singh's case in that suit that the Defendants were exempted from payment under any special contract), and the rent receipts filed by the Defendants showing payment of a particular rent were believed by the Court, although there is no finding as to what the rent payable by the Defendants was. The present suit being for determination of a higher rent was rightly considered by the lower Appellate Court as a suit for alteration of rent. We are accordingly of opinion that sec. 111 of the Bengal Tenancy Act applies to the present case. But then it was contended on behalf of the Appellants that in any case the suit ought not to have been entirely dismissed and that the Court ought to have adjourned the trial of the suit for three months after the final publication of the record-of-rights : and reliance was placed upon the case of Ram Narayan v. Lachmi Narayan 17 C.L.J. 239 : S.C. 17 C.W.N. 403 (1912) in which such a view was taken with reference to sec. 91 of the Chota Nagpur Tenancy Act of 1908, the provisions of which are similar to those of sec. 111 of the Bengal Tenancy Act. It is contended on behalf of the Respondent that the observations made in that case upon the points are obiter as it was a suit for recovery of possession and the learned Judges held that sec. 91 of the Chota Nagpur Tenancy Act could not bar the suit and that the decisions relied upon in that case are distinguishable. We need not discuss those cases as the learned Judges in that case only relied upon the principle recognised in the cases referred to by them, and it appears to us that the principle recognised by the learned Judges is one which ought to be followed in a case like this. We are told that more than three months have expired from the final publication of the record-of-rights, so that a fresh suit can be instituted at once, if the present suit is dismissed on the ground that it was instituted before the expiry of three months from the final publication of the record-of-rights. Under the circumstances we do not think that the suit should be dismissed now that three months have already expired from the final publication of the record-of-rights.

3. Another contention raised by the Appellants was that the Defendants having agreed to abide by the decision of the Court of first instance after local investigation, and the Court upon local investigation having come to the conclusion that Rs. 9 per bigha was a fair and proper rent for the disputed land and passed a decree accordingly, the Defendants were precluded from preferring an appeal against the said decision of the Court of first instance. But if, as we have held, the suit was one for alteration of rent and therefore not maintainable under the provisions of the Bengal Tenancy Act, an agreement like that cannot

be binding upon the Defendants. We think therefore that the Defendants were not precluded by the agreement referred to above. We are accordingly of opinion that the decrees of the Courts below should be set aside and the case should be sent back to the Court of first instance for trial de novo on the merits. The Appellants must however pay the Respondents' costs of this Court and of the lower Appellate Court, the costs of the first Court will abide the result.