

(1924) 11 CAL CK 0049
In the Calcutta High Court

Nayan Manjuri Dasi

APPELLANT

Vs

Chairman, Howrah Municipality and Another

RESPONDENT

Date of Decision : 28-11-1924

Acts Referred:

Citation : AIR 1925 Cal 1067 : 87 Ind. Cas. 229

Hon'ble Judges : Suhrawardy, J;Cuming, J

Bench : Full Bench

Judgement

Cuming, J.—In the suit out of which this appeal has arisen the Chairman of the Municipality, of Howrah, sued the appellant for the recovery of Rs. 100-6-6 being the Municipal tax of a certain holding No. 25-1, Courys Road. Defendant Nos. 2, 3 and 4 were made defendants on the ground that they had acquired a right on the property and that they were in possession. The defendants raised various defences that it is not necessary now to set out in detail. The learned Munsif decreed the suit in the following terms:

Order that a decree be made for the full amount claimed and the costs, declaring that the sum be a first charge on the holding and the building and the moveable property to be found on the land subject to the prior payment of the land revenue if any due, on the land directing the defendants to pay the decretal amount and costs within a month from this date, in default of which the land and the building and the moveables to be found on the land will be sold for the arrears so decreed with costs.

2. The defendants appealed to the District Court. That Court dismissed the appeal with costs. Defendant No. 1 has appealed to this Court. He contends that Section 228 has no application to the present case and that, therefore, no decree can be made against the property.

3. His argument is as follows:

The rate has been assessed on the holding and house u/s 104 of the Bengal Municipal Act at a consolidated rate. Section 228 of the Calcutta Municipal Act

which has been made applicable to the Municipality of Howrah provides that the consolidated rate due in respect of any building or land shall, subject to the prior payment of the land revenue due if any, be a first charge on the land or building etc.

4. The rate in the present case has been assessed on the house and land. Section 228 speaks of any building or house. There-fore, it does not contemplate a consolidated rate assessed on the house and the land. You cannot read " and " for " or " in the section.

5. We are not prepared to put on the section the limited meaning that the appellant will ask us to do.

6. Maxwell in Interpretation of Statutes has pointed out that it is sometimes necessary to read the conjunctions "or" and "and" one for the other.

7. The policy of the Act would seem to be to make the holding primarily responsible for rates assessed on it. When the Act speaks of the rates on any building or land, it seems to us that it would be straining the words of the section to say that it did not refer to the tax which had been assessed on the land and the house taken together.

8. The expression building or land in Section 228, we think, includes the case of a rate assessed on a building and land and that such an arrear of rate becomes a charge on the land and house.

9. The decision of the lower Courts is, therefore, right and the appeal must be dismissed with costs.

Suhrawardy, J.

10. I agree.