

(1892) 07 CAL CK 0007
In the Calcutta High Court

Peary Mohun Mukerji

APPELLANT

Vs

Ali Sheikh and Others

RESPONDENT

Date of Decision : 18-07-1892

Acts Referred:

Bengal Tenancy Act, 1885 — Section 158

Citation : (1893) ILR (Cal) 249

Hon'ble Judges : Rampini, J; Pigot, J

Bench : Division Bench

Judgement

Pigot and Rampini, JJ.—The plaintiff in this suit seeks to eject the defendant No. 1, Ali Sheikh, from a certain plot of land, and to obtain khas possession of the land himself. He also prays that a lease of the land granted by the defendant No. 2 to the defendant No. 1 may be declared invalid, and that a former decree passed on an application by the defendant No. 1 u/s 158 of the Bengal Tenancy Act, in which it was declared that the defendant No. 1 was his (i.e., the present plaintiff's) tenant in respect of the land in dispute, may be set aside. It is alleged that the defendant No. 2 was formerly the plaintiff's gumastha and that when he let the land to the defendant No. 1, he exceeded his powers, and that the plaintiff subsequently let it to the defendant No. 3, who according to the plaintiff ought now to be in occupation of it, but who has been kept out of it by the defendant No. 1.

2. Both the Lower Courts have held that the suit is barred by the rule of res judicata; inasmuch as it has been already decided in the application u/s 158 of the Bengal Tenancy Act that the defendant No. 1 is the plaintiff's tenant in respect of the land. They have therefore dismissed the suit.

3. In appeal the plaintiff contends that the present suit is not barred by res judicata, that the Courts which decided the application u/s 158 of the Bengal Tenancy Act were not Courts of competent jurisdiction, inasmuch as they were not entitled in such a proceeding to decide between the plaintiff and the defendant whether there existed the relation of landlord and tenant between

them : in other words, it is said this matter was not directly and substantially in issue between the parties in the previous proceeding, as it is only in cases in which the relation of landlord and tenant is admitted to exist between parties that a Court can entertain an application u/s 158 of the Bengal Tenancy Act.

4. The question appears to be a somewhat difficult one. On the one hand, in favour of the appellant there appear to be the following considerations : (1) that the words in the section "on the application of the landlord or the tenant of the land (not on the application of a person alleging himself to be the landlord or the tenant of the land") seem to point to the conclusion that the Court is meant to deal u/s 158 with the case of an admitted tenancy; (2) the section while enumerating the points to be determined by a Court does not say that it is to determine the question of the existence of the relation of landlord and tenant. It therefore does not seem to contemplate the existence of dispute on this point, and (3) that the Court-fee payable on the application u/s 158 is either 1 anna or 8 annas according as the value of the subject-matter of the suit is below or above Rs. 50. It can hardly have been intended by the Legislature that an important question, such as that of the relation of landlord and tenant, should be adjudicated on payment of such an "insignificant Court-fee duty. Then in the case of *Bhupendro Narayan Dutt v. Nemye Chund Mondal* ILR 15 Cal. 627 it has been said that "if the appellants had altogether denied the respondent's tenancy, they must have brought an action of ejectment, but by acknowledging him as their tenant, they seem to bring themselves within the provisions of the section." This passage certainly favours the view that it is only in case of an admitted tenancy that Courts have jurisdiction u/s 158. Again, in the Full Bench case of *Debendra Kumar Bundopadhyaya v. Bhupendro Narain Dutt* ILR 19 Cal. 182 it is said: "It is, we think, clear that the petitioners assert that no tenancy in fact existed between themselves and the opposite party at or before the date of the petition, and the admission of a tenancy, we think, merely amounts to an expression of willingness on their part, that a tenancy should now be treated as existing in order to give jurisdiction u/s 158, and so to enable them to remove the opposite party from the land, This admission does not in our opinion bring the case within the meaning of the section, the object of which is to enable the Court to ascertain what are the incidents of the existing arrangements between a landlord and his tenant, and not to enable the Court to make a new contract between the parties between whom no contract was in existence at and before the date of the application." This extract, too, is in favour of the view that a Court has jurisdiction u/s 158, Bengal Tenancy Act, only when a tenancy is admitted, and that it should not under that section proceed to decide a dispute as to the existence of the relation of landlord and tenant between the parties to the application.

5. On the other hand, it may, no doubt, be said that when the section gives the Court power to determine "the name and description of the tenant (if any)" it gives it authority to decide such a dispute; for, if there be such a dispute, the name and description of the tenant cannot be decided without enquiring into and

deciding the dispute. But we are of opinion that such an issue can only be decided collaterally, and that it does not arise between the parties in a proceeding u/s 158, in such a manner as to make the decision upon it res judicata between the parties in a subsequent regular suit. In our opinion the object of Section 158 is merely to provide a summary procedure for settling disputes between landlord and tenant in regard to the particulars referred to in Clauses (a), (c) and (d) of the section. Though Clause (b) does authorize the Court to determine the name and description of the tenant, this we think, was not intended to and does not authorize the Court to decide conclusively disputes as to who is the tenant or as to who is entitled to the occupation of the land. The section in other words does not empower the Court to decide disputes as to the right to possession of the land. It could not in a proceeding u/s 158 of the Act pass a decree for possession; so that if it were to decide such questions it might declare one person entitled to possession, while another might ostensibly hold, and might continue to hold actual and direct possession of the land. Further, the section does not empower the Court to bring all persons claiming to have rights on the land before it. It might therefore be, if the respondent's contention as to the meaning of the section be correct, that the Court would decide questions of the right to possession without having all the persons having conflicting claims to the land before it. This seems to have been the case in the previous suit between the present plaintiff and the defendant No. 1; for the defendant No. 1, the applicant in that proceeding, did not make the defendant No. 3, who the plaintiff alleges is the tenant of the land, a party to his application u/s 158. Under these circumstances we decree the appeal and remand the suit to the Court of First Instance to be decided on its merits. Costs to abide the result.