
(1904) 01 CAL CK 0024

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 829 of 1901

Peary Mohun Paul

APPELLANT

Vs

Arsed Ali and others

RESPONDENT

Date of Decision : 06-01-1904

Acts Referred:

Citation : (1904) 01 CAL CK 0024

Final Decision : Dismissed

Judgement

Banerjee, J.—In this appeal which arises out of a suit brought by the Plaintiff-Appellant for recovery of rent, two questions have been raised for determination in the argument of the learned vakil for the Appellant, namely, first, whether the decision of the lower Appellate Court that the transfer to the Plaintiff is invalid by reason of the landlord's fee not having been paid as required by sec. 12 of the Bengal Tenancy Act can stand after the enactment of the Bengal Act No. 1 of 1903; and, second, whether the lower Appellate Court was right in holding that the howla in respect of which arrears have been claimed is not comprised in the Plaintiff's kobala, when the defence did not urge that it was not so comprised, when no issue was raised on the point and when the kobala itself shows the contrary. Upon the first point I am of opinion that although the lower Appellate Court when it decided the appeal before it was right, and in fact was bound, to follow the decision of this Court in the case of Babar Ali v. Krishna Manini Dassi ILR 26 Cal. 603 (1899) which fully supports the view it has taken. The subsequent passing of Bengal Act No. 1 of 1903 altered the situation and entitled the Plaintiff to ask this Court to hold that the transfer to him is not rendered invalid merely on the ground that the landlord's fee prescribed by sec. 12 of the Bengal Tenancy Act has not been paid. This is clear from sec. 1 of the Act.

2. The learned vakil for the Respondents contends that when there has been a decision of a competent Court declaring the transfer to be invalid before the passing of the Act, the Act cannot affect such a case, but this contention is opposed to the language of sec. 1 of the Bengal Act I of 1903; for the proviso to

that section which runs in these words, "provided always that subject to the explanation following nothing in this section shall be held to affect the decision of a Court of competent jurisdiction which has become final before the commencement of this Act," clearly shows that where a decision of a Court of competent jurisdiction has not become final before the commencement of the Act, the Act shall have operation in such a case, the effect of the proviso in my opinion being to leave untouched the decision of a competent Court which has become final before the commencement of the Act, that is to say, in regard to which the time for preferring an appeal has expired without any appeal being preferred.

3. In the present case this second appeal was preferred on the 22nd May 1901, and as that appeal was pending at the date of the commencement of the Bengal Act I of 1903, it cannot be said that that was a decision of a Court of competent jurisdiction which had become final before the commencement of the Act.

4. The first contention of the Appellant must therefore succeed, and it must be held that the transfer to the Appellant is not invalid merely by reason of the landlord's fee not having been paid.

5. Then as to the second point, it is clear that there was nothing in the defence, nor was there anything expressly said in either of the two issues upon which the parties went to trial in the first Court, to show that the question whether the howla was comprised in the Plaintiff's kobala was raised, nor does the judgment of the first Court indicate that the point was raised even in the course of the argument. On the contrary, so far as one can gather from the description of the tenure or holding in respect of which rent is claimed and from the description given in the Plaintiff's kobala, it would seem that the howla is comprised in the last-mentioned document.

6. The learned vakil for the Respondents contends that though the ground upon which on the merits the lower Appellate Court has held the Plaintiff not to be entitled to the arrears claimed may not be quite correct, there are other grounds upon which the Plaintiff's claim ought to be dismissed.

7. That may or may not be so. It is not for this Court in second appeal to determine that, as the question involves investigation into matters of fact. It will be for the lower Appellate Court, upon the remand that I am going to order, to determine those questions if they really arise upon the case.

8. The result then is that the decree of the lower Appellate Court must be set aside and the case sent back to that Court in order that it may dispose of the appeal before it having regard to the observations made above. The costs of this appeal will abide the result.