(1930) 12 CAL CK 0028

In the Calcutta High Court

Rajlakshi Dassi APPELLANT

Vs

Corporation of Calcutta RESPONDENT

Date of Decision : 11-12-1930

Acts Referred:

Calcutta Municipal Act, 1923 — Section 205

Citation : AIR 1931 Cal 557

Judgement

1. The facts involved in these appeals shortly stated are as follows: The properties described in the schedules to the plaints in the suits out of which these appeals have arisen belonged to one Raj Ballav Sil. They are all situate within the jurisdiction of the Corporation of Calcutta. Raj Ballav died and his son Jogendra inherited the properties. Jogendra died leaving him surviving his widow Katyani and a daughter named Rajlakshi Dasi. After Jogendra''s death the widow Katyani succeeded her husband and was in possession of the properties. She made default in paying the municipal rates and taxes due in respect of the said properties. The Corporation of Calcutta thereupon instituted the present suits for recovery of the arrears of races and taxes. Katyani died after the institution of the suits. Her daughter Rajlakshi has been substituted in her place on the record.

2. She contends that she is now in possession of the premises as reversioner to the estate of her father and not as heiress of her mother, that she is not responsible for the arrears duo from her mother who had only a life interest in these properties, and further that the said arrears cannot have operation as first charges upon the properties in her hands. The Court of first . instance decreed the suits but disallowed certain notice or warrant fees. Rajlakshi carried appeals to the Additional District Judge, 24 Pargannas, but the latter by his judgment and decree dated 21st December 1928 dismissed her appeals. Thereupon the present appeals have been brought.

3. On behalf of the appellant, Mr. Rupendra Kumar Mitter has presented an ingenious argument. He argues that although the consolidated rate due from any person in respect of any land or building is, (subject to the prior payment of the

land revenue, if any, due to the Government thereon) a first charge upon the said land or building by virtue of Section 205, Calcutta Municipal Act (Bengal Act 3 of 1923), still, in the events which have happened, the appellant Rajlakshi is now in possession of the said properties not as heiress of her mother but as the heiress of her father and therefore the same are free of the charge referred to in Section 205 of the Act in respect of the arrears of rates and taxes which had accrued due during the time her mother was in possession of the properties and in support of this contention he has drawn our attention to certain cases u/s 65, Ben, Ten. Act.

4. We are of opinion that the analogy drawn from Section 65, Ben. Ten. Act, cannot hold good having regard to the express words of Section 205, Calcutta Municipal Act. Section 65 deals with the effect of a rent decree under the Bengal Tenancy Act; and various cases have been decided from time to time laying down what in law is the effect of a decree for rent against a Hindu widow under the Bengal Tenancy Act. For instance where a decree for arrears of rent under this Act had been obtained against a Hindu widow but the same was put into execution after her death against properties forming her father''s estate in which she had only a life interest, it has been held that it was a decree merely against her personally and was to be satisfied out of whatever she left at her death and that the estate which had passed to the next heirs was not liable: see Kristo Gobind v. Hem Chunder [1889] 16 Cal. 511. This and other similar cases were considered and referred to in the judgment of this Court in the case reported in Bireshur Das v. Kamal Kumar [1912] 16 I. C. 437: see also in this connexion the case reported in Raghubir Saran and Another Vs. Ram Saran and Another, . But it has also been held that where a decree for rent under the Bengal Tenancy Act was obtained against a Hindu widow as heiress of her husband, the decree after her death may be executed against the defaulting tenure by proceeding against the reversionary heir: see Ashutosh v. Akhoy Kumary [1916] 34 I. C. 581. Further in the case of revenue-paying estates, it has been held that where a share in respect of which a separate account had been opened was inherited by a Hindu widow from her father and was then sold for default in paying Government revenue, the complete owner''s interest and not merely the life interest in the estate passes to the purchaser: Banalata v. Monmotha Nath 11 C. W. N. 821.

5. In this case however we are not concerned with the operation of a rent decree under the Bengal Tenancy Act and no useful purpose can be served by attempting to interpret Section 205, Calcutta Municipal Act, by drawing analogies from eases which have been decided under the Bengal Tenancy Act. The arrears in this instance were clearly due by Katyani, The suits were instituted against Katlyani. She was the owner of the properties within the meaning of the definition of the expression in the Calcutta Municipal Act. Her daughter is now in possession of the properties. There cannot be any doubt whatsoever having regard to the plain language of Section 205, Calcutta Municipal Act, that the rates and taxes which became due in her mother''s lifetime became a statutory first charge on the properties now in her possession and that that charge

remains enforceable against the said properties, irrespective of the properties having passed in the meantime into the hands of a person other than the original debtor. The statutory charge provided by the Act is intended as a security to the public authority for the payment of the rates; there is consequently every reason that it should be given an interpretation wide enough to secure the end in view, and that it should not be restricted by considerations that might well have arisen if the charge had rested on agreement between the parties arising out of contractual relationship.

6. The Calcutta Municipal Act does not make any distinction between the various classes of persons from whom rates and taxes may be found to be due in respect of properties in Calcutta. The Act is not concerned with the personal laws of the rate-payers and the whole machinery of the Calcutta Municipal Act will be thrown out of gear if it were held that in the events which have happened a person such as Rajlakshi who is in possession of the properties and who is in enjoyment of the amenities provided for under the Calcutta Municipal Act, should continue to enjoy the rents, issues and profits of the said properties without being liable to pay the arrears of rates and taxes in respect of such properties. In our opinion, there is no substance in these appeals and the same must stand dismissed with costs.

