

(1935) 01 PAT CK 0015

In the Patna High Court

Case No : Civil Revn. Nos. 192 of 231 of 1934

Rajpati Singh and others

APPELLANT

Vs

Rani Bhubneswari Kuer

RESPONDENT

Date of Decision : 23-01-1935

Acts Referred:

Citation : (1935) 01 PAT CK 0015

Final Decision : Dismissed

Judgement

Dhavle, J.—There is no substance in these applications. The landlord, opposite party applied for distraint under S. 121, Ben. Ten. Act, and the lower Court, after examining the landlord's patwari under S. 123, adopted the usual procedure of distraint. The petitioners, who are the tenants, appeared in the Court of the learned Munsif afterwards and raised various objections whir] were overruled. The first point urged on behalf of the petitioners is that the lower Court had no jurisdiction because rent was in arrear from these tenants not only for one year but for several more years. The words of S. 121, are "where an arrear of rent is due to the landlord by a raiyat and has not been due for more than a year." In the present cases distraint was taken Out for the year 1340. The learned advocate points out that rents were due from these tenants for the years 1338 and 1339 as well, according to the allegations of the landlord. The facts that these older rents were in arrears does not affect the fact that the rents for 1340 were in arrear for not more than a year; and it is impossible to see any reason for the contention that the landlord loses his remedy of distraint for the rent of 1340 merely because rents for the earlier years were also due.

2. The second and last point raised by the learned Advocate is that the lower Court had no jurisdiction without satisfying itself that rent was in fact due for not more than a year. The learned Munsif was of opinion that the Act did not require him to see and determine whether rent was so due. He had prima facie evidence before him under S. 123, to the effect that the rent for 1340 was due, and he acted upon it. The learned advocate suggests that S. 143, of the Act is applicable

to the case and required the learned Munsif to satisfy himself that rent was in fact due for not more than a year before he issued distraint S. 143 of the Act applies to suits between landlord and tenant, and the learned advocate has not been aide to show why proceedings for distraint should be regarded as suits. One has only to refer to Ch. 12 which deals with distraint to see the non-judicial character of the proceedings, non-judicial in the sense that the Court proceeds in the absence of the tenant, the landlord comes and gives his evidence ex parte, and upon that all that the Court is required to do is to carry the distraint out. If the landlord abuses S. 121, the remedy is expressly provided by S. 140 occurring in that chapter which runs:

Any person whose property is distained on an application made under S. 121, in any case in which such an application is not permitted by that section, may instill]to a suit against the applicant for the recovery of compensation.

3. This really concludes the matter. We asked the learned advocate what he would have us do sitting in revision. The distraint has already been effected, and the landlord has been paid the rent for 1340 which, he alleged was due to him. The distraint therefore cannot be recalled, nor is it possible to order a refund of the money on a finding which has not yet been arrived at by anybody that rent for the year 1340 was not due, and which, if it could be arrived at, might render S. 140 more or less nugatory. I would therefore dismiss the applications with costs. Hearing fee one gold mohur in both cases.

Courtney-Terrell, C.J.

4. I agree.