
(1922) 04 CAL CK 0010
In the Calcutta High Court

Sheikh Haji Sadakali Khan

APPELLANT

Vs

Janakinath Singha Roy

RESPONDENT

Date of Decision : 27-04-1922

Acts Referred:

Bengal Tenancy Act, 1885 — Section 153
Civil Procedure Code, 1908 (CPC) — Order 8 Rule 2

Citation : 69 Ind. Cas. 194

Hon'ble Judges : Ghose, J

Bench : Single Bench

Judgement

Ghose, J.—This appeal arises out of a suit for rent brought by the plaintiff respondent, the landlord, against the defendant-appellant, the tenant, for 15 cottas of land at the rate of Be. 1-8-0 per annum. The defendant's plea mainly was that the holding consisted of 1 1/2 bighas and that the annual rent payable was not Re. 180 for 15 cottas but Rs. 3 for the entire holding of 1 1/2 bighas. The findings arrived at by both the Courts below were that the defendants had told a moiety of the holding, namely, 15 cottas of land to one Sobur Ali, that the purchaser was in possession of that half share by virtue of his purchase and that the landlord with the defendant's consent sub-divided the holding sometime after 1320 B. S. It appears also that the landlord has been receiving rent for the other half share of the original holding from the purchaser. Upon those findings the Court of Appeal held that the landlord was entitled to claim rent for this 15 cottas of land at the rate mentioned. There was another plea raised before the learned Subordinate Judge that the suit was barred by the special rule of limitation contained in Schedule III, Article 2, of the Bengal Tenancy Act, inasmuch as the rent claimed was deposited by the defendant u/s 61 of the Act and the suit was brought after the lapse of more than six months from the date of the deposit. The learned Subordinate Judge refused to allow the defendant to raise this point in appeal before him for the first time, because this point was not raised in the pleadings nor in the Court of first instance at the trial and was not also taken in the memo, of appeal before the lower Appellate Court. It is argued

on behalf of the appellant that the plea of limitation can be raised at any stage in the suit and even, for the first time, in appeal. But this special plea of limitation ought to have been taken in the written statement because it is a defense upon a question of fact which has not been stated in the plaint itself. Under Order VIII, Rule 2, Code of Civil Procedure, it was incumbent upon the defendant to raise this question of special limitation, as the determination of that question depends upon the fact as to when service of notice of the deposit was made on the landlord. I think, therefore, that the learned Subordinate Judge was quite justified in not allowing the defendant to raise this plea of special limitation for the first time in appeal.

2. The next question that is urged on behalf of the defendant-appellant is that the sub-division of the holding is not valid as against him. This question, it seems to me, is concluded by the finding of fact made by the lower Appellate Court that the transfer by the defendant of the other half share was a real transaction and that the subdivision had been made with his consent. It is open to the landlord to say that he is not bound by any sub-division made by the tenants of the holding; it is also quite open to him to give effect to the subdivision made by the tenants themselves. This ground also, therefore, fails.

3. A preliminary objection was raised on behalf of the respondent that there is no appeal having regard to the provisions of Section 153 of the Bengal Tenancy Act. It seems, however, that it may be urged on behalf of the appellant that the question of the amount of rent annually payable by the tenant was raised in this case, although in a rather novel way because the tenant pleaded that he was liable to pay more than what the landlord claimed. Having regard to the fact that the appeal has been heard on the merits, I need not express any opinion on this question.

4. The appeal fails and must be dismissed with costs.