
(1922) 06 PAT CK 0008
In the Patna High Court
Case No : Appeal No. 108 of 1921

Sheogobind Singh and others

APPELLANT

Vs

Mahabir Misser and others

RESPONDENT

Date of Decision : 05-06-1922

Acts Referred:

Citation : (1922) 06 PAT CK 0008

Judgement

Coutts, J.—This appeal arises out of a suit to recover a sum of Rs. 2,573-0-9, principal, and Rs. 1,825-8-0, interest, on the basis of a compromise which had been entered into between the parties on the 18th of December, 1914. The plaintiffs are the landlords of mauza Mohania Najapore, Tauzi No. 1853, and they brought a suit against the defendants for ejectment and recovery of khas possession on the ground that the defendants, who had apparently been holding under a kahuliyat the term of which had expired, were trespassers. The suit went on for a long time and finally on 18-12-14 it was compromised.

2. By the compromise the defendants were to stay in possession of the land and were to be recognized as tenants with occupancy rights at the rents which were mentioned in the compromise. It was also agreed that the defendants were to pay Rs. 2,57 3-0-9 in lieu of rents which was due to the plaintiffs up to the year 1321, the payment was to be made within three months, and if it was not made, interest was to be recoverable at 25 per cent, per annum. The suit was decreed in terms of this compromise and it is on the basis of this compromise that the suit with which we are now concerned was brought. Several issues were raised by the defendants but the main points in the suit were that they had, no knowledge of the previous litigation; that the compromise was fraudulent; that there was defect of parties, and that the compromise was not a good compromise. The suit was decreed in the Court of first instance but on appeal to the District Judge, that decision was set aside on the ground that the compromise was in contravention of the terms of S. 147-A and S. 29 of the Bengal Tenancy Act inasmuch as it involved an illegal enhancement of rent. The plaintiffs have appealed and the only question which arises in the appeal is

whether in fact the compromise is in contravention of the provisions of S. 147-A and S. 29 of the Bengal Tenancy Act, It has been found by the lower appellate Court, and we must accept the finding of fact, that if in fact there has been an enhancement of rent it will be illegal under the provisions of Section 29 of the Bengal Tenancy Act. The question is, however, whether the provisions of S. 147-A or S. 29 of the Act apply; and in finding that they do, I think, the learned District Judge has fallen into an error. S. 29 of the Act applies to the rent of an occupancy raiyat and S. 147-A applies to a suit between a landlord and a tenant as such.

3. Now the suit which ended in the compromise-decree was not a suit between a landlord and a tenant as such, it was a suit between a landlord and a trespasser, and although the compromise recognizes the defendants as occupancy tenants from the date of the compromise it does not say that they were occupancy tenants before that; consequently neither Section 147-A nor S. 29 applies in the present case.

4. It has been suggested that bringing a suit for ejectment was merely a device on the part of the landlord in order to avoid the provisions of the Bengal Tenancy Act, but there is absolutely nothing to show that this was so. The suit was apparently a bona fide suit which was strenuously contested and it was in consideration of the plaintiffs recognizing the defendants as tenants that a compromise was arrived at. Moreover, the present suit is not a suit for rent but a suit for money on the basis of bona fide compromise. It has been strenuously argued by the learned Vakil for the respondents that a compromise which involves an illegal enhancement is void and we have been referred to several decisions. They are all of the same nature and I need only refer to the case of *Manindra Chandra Nandi v. Upendra Chandra Hazra* (1908) 36 Cal. 604 = 2 I. C. 828 = 9 C. L. J. 343.

5. That, however, was a suit between a landlord and a tenant as such and is clearly distinguishable from the present case; and I know of no decision nor have we been referred to any decision in which the provisions of Sec. 147-A have been applied to a case which is not clearly a case between a landlord and a tenant as such.

6. In the present case, the compromise was not in such a suit and, in my opinion, there was nothing unlawful in the compromise, which was apparently bona fide and for consideration. That being so, the provisions of neither S. 29 nor S. 147-A. apply in the present case and the plaintiffs are entitled to succeed.

7. I would accordingly decree this appeal with costs setting aside the decision of the learned District Judge and restoring that of the learned Subordinate Judge.

8. Adami, J.

9. I agree.