
(1948) 03 CAL CK 0014
In the Calcutta High Court
Case No : A.F.A.D. No. 740 of 1944

Sm. Amiya Bala Singha

APPELLANT

Vs

Dhanai Naskar and others

RESPONDENT

Date of Decision : 23-03-1948

Acts Referred:

Citation : (1948) 03 CAL CK 0014

Judgement

Harries, C.J.—This is a second appeal from concurrent decrees of the Courts below made in favour of defendant 1.

2. The facts of the case can be shortly stated as follows. The land in suit appertained to a jama of 300 bighas held by Harez Molla and others. Later, these lands were sold by the co-sharers to Sailendra Singha. One Salimani, a son of Harez, took settlement of 25 bighas of land from Sailendra by executing a kabuliyat: The superior landlord, Bimal Chandra Ghose and others however obtained a decree for rent as against the tenants of this holding and put it up for sale. The holding was purchased by the plaintiff Ramballav. After his purchase he served notice under S. 167, Bengal Tenancy Act, on Salimani and sold the lands in suit by a kabala dated 14th September 1939. That plaintiff alleged that Sadimani had a chasbari on the land and he lived there during the cultivation season. It is said that he had no interest in the land but that he resisted the plaintiff when he went to take possession.

3. Defendant 1 claimed an interest in plot 1 of the property in dispute and claimed that his rent had been settled under S. 104, Bengal Tenancy Act, and that he had been recorded as a tenant. Hence the suit was not maintainable.

4. Both the Courts below held that the suit would not lie by reason of S. 104H, Bengal Tenancy Act. That section deals with rights of a person aggrieved by an entry of a rent settled in a settlement rent-roll prepared under Ss. 104A to 104F and incorporated in a record-of-rights finally published under S. 103A. Any person who is aggrieved may bring a suit within six months from the date of the certificate of the final publication of the record-of-rights and it is provided that a

suit may be instituted on a number of grounds including one denying the relationship of landlord and tenant.

5. Both the Courts below were of opinion that this suit was barred by reason of S. 104H, Bengal Tenancy Act, but in my judgment that cannot be so. The learned Additional District Judge in his judgment points out that the record-of-rights was finally published on 29th April 1942, and that no suit was filed under S. 104H, Bengal Tenancy Act. He then points out that the present suit was filed on 16th September 1941, that is a matter of over seven months before the record-of-rights was finally published.

6. As this suit was filed before the record-of-rights was finally published, S. 104H, Bengal Tenancy Act, can never be a bar because that section only deals with rights of persons aggrieved with certain entries in a settlement rent-roll incorporated in a record-of-rights finally published. The plaintiff was not such a person because there was no record-of-rights with the entry complained of in existence when he brought the suit. It was true that preparations were going on for the publication of the record-of-rights, but it had not been published. That being so, whatever the plaintiff's rights were, they could not be barred by S. 104H. It has been suggested that the plaintiffs rights might be barred under Ss. 111 and 111A, Bengal Tenancy Act, and this point does not seem to have been considered by the Courts below. Again, the question will arise whether or not these sections can apply to the present suit which was, as I have said, instituted before the record-of-rights was finally published. This aspect of the case was entirely overlooked by the lower appellate Court and it appears to me that the decree passed cannot be sustained and the matter must be heard on the merits.

7. That being so, this second appeal must be allowed and the decrees of the lower Courts set aside and the case remanded to the trial Court to be heard and determined on the merits and in accordance with the observations made in this judgment.

8. As no one has appeared on behalf of respondents, I would make no order as to costs of this appeal. The costs of the earlier proceedings in the trial Court and in the lower appellate Court will abide the event of the re-hearing in the trial Court which I have ordered.