

(1905) 04 CAL CK 0007

In the Calcutta High Court

Case No : Appeal From Appellate Decree No. 1084 of 1901.

Sri Maharani Beni Pershad Koeri

APPELLANT

Vs

Ramdahin Pandey and Others

RESPONDENT

Date of Decision : 12-04-1905

Acts Referred:

Citation : (1905) 04 CAL CK 0007

Final Decision : Dismissed

Judgement

1. This is an appeal against a decision of the District Judge of Arrah, dated the 25th of February 1901. The Plaintiff sues for rent of a holding. His suit is brought against two tenants jointly.

2. The defence is that the Plaintiff cannot sue the tenants jointly because his tehsildar has been in the habit, for some years past, of collecting rent separately from the tenants.

3. The lower Courts have dismissed the suit.

4. The Plaintiff now appeals to this Court and he relies upon sec. 88 of the Bengal Tenancy Act, which provides that a division of a tenure or holding or distribution of the rent thereof shall not be binding on the landlord unless made with his consent in writing. Admittedly, there is no consent in writing in the case; and therefore, admittedly, if the law is to be strictly followed, the Plaintiff is perfectly entitled to sue the two tenants jointly. But this Court has laid down in the Full Bench case of Peary Mohun Mukerjee v. Gopal Paik 2 C. W. N. 375; s. c. I. L. R. 25 Cal. 531, F. B. (1898). "that a receipt for rent granted by a landlord or his agent, containing a recital that a tenant's name is registered in the landlord's sherista as a tenant of a portion of the original holding, at a rent which is a portion of the original rent, does amount to a consent in writing by the landlord to a subdivision of the holding and a distribution of the rent payable in respect thereof, within the meaning of sec. 88 of the Bengal Tenancy Act."

5. Now the contention of the learned pleader for the Appellant is that the receipts

are not such as come within the purview of this ruling, and that there is nothing to show that the tehsildar was authorized by the landlord to grant such receipts. In support of this argument he cites the two cases of Moharani Beni Pershad Koeri v. Goburdhan Koeri 6 C. W. N. 823 (1902) and Jnanendra Mohan Chowdhury v. Gopal Das Chowdhury 8 C. W. N. 923 : s. c. I. L. R. 31 Cal. 1026 (1904). In the first of these cases it has been held that where a holding is in the occupation of several tenants at one entire rental, the fact that the landlord tehsildar has accepted from the various tenants proportionate parts of the rent does not bind the landlord to recognise a separation of the tenancy in the absence of evidence to connect, the landlord with the receipt of any proportionate rate of rent by the tehsildar. In the second case it has been laid down that a receipt for rent granted by a landlord or his agent, containing no specification of the total jama of the taluk, no statement of the arrear of the taluk or of the portion of the taluk which was separated and separately settled with the tenant, nor of the share separated, nor containing a recital that the tenant was registered in the landlord's sherista as a tenant of a portion of the original holding at a rent which was a portion of the original rent, does not amount to a consent in writing by the landlord of a subdivision of the holding within the meaning of sec. 88 of the Bengal Tenancy Act.

6. The learned pleader for the Appellant urges that the receipts in this case are not of such a nature as to bring them within the purview of the Full Bench ruling, but rather such as come within the purview of the last rulings cited, particularly of the latter one.

7. The learned pleader for the Respondents, however, calls attention to a passage in the decision of the Munsif, in which the Munsif observes:--"The Defendants urge to hold the land separately from Tapsi Ojha and that their names are alleged to have been entered in the malik's sherista and separate receipts were given to them. Their contentions are fully borne out by the receipts proved on the side of the Defendants, Exs A to A2 and Exs. D to D8." Now it appears to us that receipts that contain such particulars are not. such as come within the purview of the Full Bench ruling but rather such as come within the purview of the ruling in the case of Jnanendra Mohan Chowdhury v. Gopal Das Chowdhury 8 C. W. N. 923 : s. c. I. L. R. 31 Cal. 1026 (1904), which lays down that such receipts do not amount to a consent in writing to the subdivision of the holding within the meaning of sec. 88 of the Bengal Tenancy Act.

8. We have invited the learned pleader for the Respondents to lay the receipts before us, so that we may see for ourselves their nature. But it appears from an entry on the record that the Defendants have taken them back, and that they are no longer in the record. We must therefore in the absence of the receipts themselves, rely on the description of them given by the Munsif; and having regard to that description, it does not appear to us that they can be said to amount to a consent in writing on the part of the landlord to a subdivision of the tenure.

9. For these reasons we do not think that the District Judge was right in dismissing the suit; and we must accordingly remand the case to him to be tried out and dealt with upon the merits. of course, the learned District Judge was quite right in dismissing the tehsildar from the category of Defendants. No decree could be given against him, as he is not a tenant. The case is remanded to the District Judge to be dealt with as directed above. The costs will abide the result.