

(1929) 05 CAL CK 0005
In the Calcutta High Court

Srimati Tannangini Debi

APPELLANT

Vs

Abhoya Charan Sardar and Others

RESPONDENT

Date of Decision : 01-05-1929

Acts Referred:

Bengal Tenancy Act, 1885 — Section 148A

Citation : 125 Ind. Cas. 302

Hon'ble Judges : George Clause Rankin, C.J;B.B. Ghose, J

Bench : Division Bench

Judgement

George Clause Rankin, C.J.—In this case, the plaintiffs are the 12 annas co-sharer landlords and they bring their suit for rent for 1329 to 1332 B.S. to the extent of their share baaing their claim upon the terms of a kabuliyat of the 23rd November, 1905. The terms of that kabuliyat are to this effect the area which is being let or settled is 2134 bighas. The tenant states that he had been in possession of that land before from the landlord's predecessor. The rate of rent is 11 annas 2? gandas per bigha and, on the 2134 bighas, the jama is Rs. 1,483. There is a clause in the kabuliyat to this effect: "If it becomes necessary to make any survey from the Government or from yoursarfear", that is, the landlords, "I shall be present in person and shall cause the survey to be made and I shall pay the costs of survey. If, on measurement the area be found to be less, I shall get abatement; if there be increase, then I shall pay rent separately at the aforesaid fixed rate."

2. In this case, the first thing that happened was a suit framed u/s 148-A of the Bengal Tanancy Act; and brought by the 4-annas landlords in 1918. The present plaintiffs were parties defendants in that suit. But the present plaintiffs took no interest, in the suit and in the end, what happened was that the 4-annaa landlords ware met by a defence on the part of the tenant that the area in his possession was lees than the amount mentioned in the kabuliyat. Thereupen by a process of reasoning which does not seem to be altogether watertight, a local investigation was ordered and it was found that the area was, in fact, 1700

bighas and no more upon which basis the 4-annas landlords got a judgment for their share of the rent on the footing that the total rent must be reduced from Rs. 1,483 mentioned in the kabuliyat to Rs. 1,228, The first question and the most important question to be considered in this case is what is the effect in law of that decision. Mr. Roy who appears for the defendant-appellant contends before us that the effect in law as between defendant and defendant in that suit was that there was a fresh settlement of rent and that the position was just as though a suit had been brought and a re-assessment of the rent had been arrived at which was binding upon the parties. Mr. Roy Choudhury who appears for the plaintiffs-respondents contends, on the other hand, that while it is true that the present plaintiffs were parties to that suit they were parties for the purposes of Section 148-A of the Bengal Tenancy Act only and that the judgment in that suit whether it is right or wrong--is not as between his client and the tenant--any assessment of rent upon a new basis: the judgment may be binding between the tenant and the 4-annas landlord, but as between the 32-annas co-sharers and the tenant it is not a judgment which operates as a fresh assessment. In my opinion, the view pressed upon us by Mr. Roy Choudhury is to be preferred. When one looks at the purpose of Section 148-A of the Bengal Tenancy Act, one finds that its purpose is this--to enable a co-sharer landlord to get the advantage of the right to sell the holding notwithstanding that he is unable to get his co-sharers to join with him as plaintiffs in instituting a suit. The section is intended to deal with cases, in particular, where the plaintiff cannot find out whether it has been paid or whether it has not been paid, and the consequence is that he may bring his suit asking for the whole of the rent but in the end limiting himself to proceed with his suit for his share only to get the right to sell the holding. In the present case, if it be assumed for the sake of argument that the present plaintiffs who were defendants in the previous suit had been in receipt of their proper proportion of the rent at the kabuliyat rate, then, when the 4-annas landlords joined them as defendants--we are to ask ourselves?did they, by staying away and taking no part in that litigation, run the risk that the judgment obtained by the 4-annas co-sharers would operate as against them as a new assessment of the rent of the holding? I am not prepared to say that it would so operate. It seems to me that, in a case u/s 148 A of the Bengal Tenancy Act, to hold that it would operate as. a new assessment of rent between co-defendants would be carrying the law further than there is any authority for so doing.

3. The question then arises--is this matter carried any further by the fact in 1927 the present plaintiffs brought a suit against, among others, the present defendants? In that suit, they set out that the area of the land was 2143 bighas, that is, the kabuliyat figure; but they did say that the rent was Rs. 1,228 which was the figure fixed in the 4-annas landlords suit of 1918, They explained, however, in the plaint in that case that they were not served in the suit of 1918, that the proceedings took place behind their back and that the plaint was filed on the assumption that until the decree was set aside it was binding, that this view

that the decree in the suit of 1918 is binding upon these plaintiffs in the sense that it re-assessed the rent so as to be binding upon them is wrong. But this plaint, so far from being an adoption of what took place in the suit of 1918, was made upon the footing that the suit of 1918 produced a wrongful result as against the plaintiffs and that they were determined to set it aside if they could. In my judgment, the position is this: the fact of this suit of 1927 adds nothing to the argument that the decree in the suit of 1918 operated as a re-assessment of the rent. It appears to me that there is nothing to show that the plaintiffs--if it be true in fact that the tenant is in occupation of the whole of the area mentioned in the kabuliyat--should not get the kabuliyat rent. In my opinion, the reasoning of the learned Judge of the trial Court is somewhat precarious by reason of the fact that he puts the case on the assumption that the previous decree was a re-assessment of the rent and that the present claim can be made as for a fresh re-assessment, of the rent in view of the result of the measurement at the district settlement proceedings. If that were the right view, as at present advised, I think, that Mr. Roy's answer would be good, namely, that the plaintiffs cannot get a re-assessment upon the ground of increase of area on the basis of re-measurement without all the landlords being plaintiffs. In my judgment, the present plaintiffs are not in the position of having to assert a claim to reassessment of the rent on the basis of the measurement at the district settlement proceedings. It appears to me that, when the matter is examined, they are entitled to stand upon their ordinary right as landlords under the kabuliyat of 1905.

4. I think, therefore, that this appeal fails and must be dismissed with costs.

B.B. Ghose, J.

6. I am of the same opinion. In my judgment the decision as regards the rate of rent in a suit brought by a co-sharer landlord who proceeds with it for his share of the rent only u/s 148-A of the Bengal Tenancy Act cannot operate as binding on the other co-sharer landlord who is joined as defendant with the tenant. When a co-sharer landlord who has obtained his proper share of the rent is joined as a defendant in a suit for rent by his co sharer for his undisputed share and no relief is asked for as against the defendant-landlord he need not take any interest in the litigation between the co-sharer plaintiff and the tenant. There is no provision in the law under which any plea set up by the tenant-defendant is to be served on the defendant-landlord. If the tenant defendant in the suit brought by a co-sharer-landlord says that the rate of rent is not so much as is alleged by the plaintiffs, the defendant landlord has no means of knowing that such a plea has been urged nor is there any procedure by which a defendant-landlord can fight the tenant as defendant on that single issue. Under such circumstances, it cannot be said that any issue was raised as between the tenant-defendant and the landlord-defendant which was decided in the suit brought by the co-sharer landlord under the provisions of Section 148-A of the Bengal Tenancy Act. The only advantage which a co sharer landlord gets when he obtains a decree for his

share under the provisions of that section is as regards the remedies for enforcing it, namely, that he can proceed to execute the decree in the same manner as if the decree had been obtained by the sole landlord or the entire body of landlords. It would be extending the scope of that section to say that the decree would have the same effect as if it was obtained by the entire body of landlords in the same manner if the defendant-landlord was also a plaintiff in the case and all the findings in the judgment in the suit would operate as against the defendant-landlord. The result may be anomalous as in this case, that one co-sharer-landlord gets under the decree a different rate of rent from what the other co-sharer-landlords would be entitled to. But there are anomalies in the Bengal Tenancy Act and this possible anomaly cannot be made a reason for holding that the decree should be binding upon the defendant-landlords.