

(1950) 03 PAT CK 0009
In the Patna High Court
Case No : A.F.A.D. No. 2042 of 1946

Surendra Nath Karandeo

APPELLANT

Vs

Digambar Pathak

RESPONDENT

Date of Decision : 16-03-1950

Acts Referred:

Bihar Tenancy Act, 1885 — Section 158AA
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, 100

Citation : AIR 1950 Patna 391

Hon'ble Judges : Ramaswami, J; Narayan, J

Bench : Division Bench

Advocate : J.M. Ghosh, for the Appellant; T.K. Prasad and K.D. De, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—The only question argued in this appeal is whether the decree obtained by defendant 8 in Rent Suit no. 809 of 1940-41 operated as a rent decree or as a money decree.

2. On behalf of the appellant, Mr. J.M. Ghosh properly conceded that if it be held that the decree had the force of a money decree this appeal must fail. If not, it is manifest that this appeal should succeed.

3. The appeal had been remanded by the High Court to the learned Subordinate Judge for rehearing the parties and

"after excluding Ex. 8, a judgment, from evidence send up a clear finding to this Court by making clear references to and discussing the relevant evidence which justifies him in holding that the decree in question was a rent decree or a money decree."

The learned Subordinate Judge has now examined the evidence afresh and submitted a finding that the decree in question operated as a money decree and not as a rent decree. Learned counsel for the appellant impeached this finding on

the ground that there was no evidence in support thereof. In my opinion, this argument is not tenable. It is true that the judgment or the decree of the rent suit was not exhibited on behalf of the parties. But as the learned Sub-ordinate Judge remarks the plaintiff definitely alleged in para. 8 of the plaint that

"defendant 8 had instituted a rent suit against defendant 1 only without impleading defendant 7 and other persons who were interested in the tenure."

There is no specific denial of this fact by the defendant in his written statement. On the contrary, in para. 11 thereof the defendant admitted that he had instituted in good faith the rent suit against defendant 1 by rightly impleading him as defendant. It was then contended for the appellant that though defendant 1 had made a gift of a portion of the land in favour of his wife he should nevertheless be deemed to have represented her in the rent suit. But there is no evidence to suggest that the property which was granted to defendant 7 was a joint family property of which defendant 1 should have been the karta. It should be noted that the deed of gift was executed on 6th February 1937 long before the rent suit was instituted. Since the appellant failed to implead defendant 7 in the rent suit it is manifest that the decree in question had not the character of a rent decree. The learned Subordinate Judge has found that Babuni and Churo were also interested in the tenure and ought to have been impleaded in the rent suits. Learned counsel for the appellant contended that the documents by which they acquired the interest were not produced in proof of the transactions. The learned Subordinate Judge, however, accepted the oral evidence on this point and found that Churo and Babuni had also interest on an utter absence of evidence and since it is essentially a question of fact the finding cannot be impeached in second appeal. The principle can not be disputed that a decree in order to operate as a rent decree should be made against all parties interested in the tenure. In AIR 1933 122 (Privy Council) the Judicial Committee held that in order to justify a sale of a tenure u/s 208, Chota Nagpur Tenancy Act, all parties interested in the tenure must be joined as defendants in the rent suit, or be sufficiently represented. Where all the parties are not joined or represented Section 211 does not apply, and the revenue Court has no jurisdiction to order a sale; consequently Section 214 does not preclude the civil Court from entertaining a suit to set it aside. The Judicial Committee stated that the circumstance that a recorded tenure-holder has not got her name entered in the landlord's sherista, nor paid rent, nor been recognised by him as a tenure-holder, was not such as to justify the landlord in getting if she has not been joined or represented in the rent suit.

4. For these reasons, therefore, I hold that this appeal fails and should be dismissed with costs.

5. The respondent has filed a cross objection that the lower appellate Court had committed an error of law in passing a decree for pendente lite interest at the rate of 6 per cent. per annum on the amount of claim. Mr. T.K. Prasad on behalf of the respondent maintained that the Courts below ought to have awarded

interest at the rate of 2 per cent, per annum from the date of the institution of the suit till the date of the payment of the amount claimed.

6. It should be stated that the learned Munsif omitted to award any interest pendente lite to the respondent. In appeal the learned Subordinate Judge granted interest pendente lite at the rate of 6 per cent. per annum on the amount of the claim. On behalf of the respondent learned counsel contended that under Order 34, Rule 11 it was obligatory upon the Court to decree interest at the contractual rate up to the date of redemption. In my opinion, it is not possible to accept this argument. Prior to 1929, the position was that u/s 34, Civil P. C., the Court had full discretion to order interest at such rate as it deemed reasonable to be paid on the principal sum adjudged from the date of the suit. Order 34, Rules 2 and 4 stipulated that the Court had to order an account to be taken of what was due to the plaintiff at the date of such decree for principal ""and interest on the mortgage." In AIR 1927 1 (Privy Council) the Judicial Committee held that in the case of mortgages the question as to rate of interest is to be determined under Order 31, and not Section 34, that upon the true construction of Order 34 it was obligatory upon the Court to decree interest at the contractual rate till the period fixed for redemption of the mortgage. At page 2 Lord Phillimore states :

"Up to this point, till the period for redemption has expired, the matter remains in contract and the interest has to be paid at the rate and with rests specified in the contract of mortgage. That is the judgment which the High Court has delivered and of which complaint is, in their Lordships' opinion, ineffectually made. But after the period of redemption has expired the matter passes from the domain of contract to that of judgment, and the right of the mortgagee should thenceforth depend not on the contents of his bond, hut on the directions in the decree,"

7. By Act XXI [21] of 1929, Order 84 was amended, and a new Rule 11 was inserted, which deals specially with interest, and provides that the Court "may" order payment of interest to the mortgagee up to the date fixed for payment at the rate payable on the principal. It follows that this special provision, which removes any conflict that there might have been between Section 34 and Order 34, Rules 2 and 4, gives a certain amount of discretion to the Court, so far as interest pendants lite and subsequent interest are concerned, as observed by Sulaiman J. in Jaigobind Singh v. Lachmi Narain Ram, A. I. R. 1940 P. C. 20 : I. L. R. (1940) K. F. C. 33 :

"It Is no longer absolutely obligatory on the Courts to decree interest at the contractual rate up to the date of redemption in all circumstances, if there be no question of the rate being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918 : see Sripat Singh and Others Vs. Naresh Chandra Base and Others, although in this case when considering Order 34, Rule 2 the Privy Council case in AIR 1927 1 (Privy Council) was overlooked. In AIR 1940 3 (Federal Court) interest after the institution of the suit was

ordered by this Court to be paid at the rate of 6 per cent. per annum on the principal amount till the date fixed for payment. In my opinion, the view then taken as to the power of a Court to reduce interest pendente lite was not contrary to law."

8. In view of the newly added provision of Order 34, Rule 11, Civil P. C., as construed by the Federal Court in the case to which reference has just been made it is manifest that the lower appellate Court has not committed any error of law in granting interest pendente lite at the rate of 6 per cent. per annum on the amount of claim.

9. For these reasons this cross-objection should in my opinion be dismissed.

Narayan, J.

10. I agree.