

(1933) 06 PAT CK 0005

In the Patna High Court

Susil Chandra Mukherji and Others

APPELLANT

Vs

Sheikh Mian Mohammad Ahsan and Others

RESPONDENT

Date of Decision : 22-06-1933

Acts Referred:

Limitation Act, 1963 — Section 19

Citation : AIR 1934 Patna 198

Hon'ble Judges : Courtney-Terrell, C.J; Dhavle, J

Bench : Full Bench

Judgement

Dhavle, J.—The question in this appeal is whether the decree for rent and cess obtained by the appellants can be executed as a rent decree under the Bengal Tenancy Act, or only as a money decree. The lower Court has held that it cannot be executed as a rent decree, and this on various grounds. In the first place the suit was registered as a money suit; secondly, it was decreed in respect of more than four years and for interest at more than 12% per cent per annum. The claim of the appellants as plaintiffs in the suit was for rent from 1329 to 1332 and for cess from 1325 to 1332 M.S.

2. The defendants in the suit who are now the respondents objected that under the Bengal Tenancy Act the plaintiffs were not entitled to sue for such long periods. This objection was upheld in the trial Court. The plaintiffs appealed to this Court, and this Court modified the decree of the trial Court by awarding to the plaintiffs not only the sums which were realizable under the Bengal Tenancy Act, but also two other sums which this Court held the plaintiffs were entitled to u/s 19, Lim. Act. The interest allowed was at the rate stipulated for in the Patni lease. But it is immaterial that this rate is in excess of that provided in the Bengal Tenancy Act, because we are here dealing with a patni lease and the lease was moreover given before the enactment of the Bengal Tenancy Act.

3. It has been argued on behalf of the respondents that the application of Section 19, Lim. Act, to the claim of the plaintiffs in the suit takes the decree obtained by them out of the operation of the Bengal Tenancy Act. But Section

185(2) makes Section 19, Lim. Act, applicable to suits under the Bengal Tenancy Act, and as to the apparent conflict between Section 185(2), Ben. Ten. Act. and Section 29(2)(b), Lim. Act, as amended in 1922 we have a decision of this Court in Hasan Imam and Others Vs. Brahmdeo Singh and Others, , which makes the position perfectly clear. That the suit was registered as a money suit does not settle the character of the decree that was actually obtained by the appellants.

4. That decree is a decree for rent and cess, and is in accordance with the Bengal Tenancy Act, reading Section 19, Lim. Act, as part of that Act in virtues of Section 185(2). The question ought not to be treated as one of mere nomenclature. The learned advocate for the respondents has endeavoured to shew that the decree is not within the Bengal Tenancy Act, because it travels beyond the schedule of the Act; but if the schedule is a part of the Act, so is Section 185(2). Ha has not been able to shew in what other respects the decree falls outside the Bengal Tenancy Act, and it seems to me that the decree ought to be treated as one under the Bengal Tenancy Act, meaning by that a rent decree that can be executed under such provisions as Section 65 and 158-B of the Act.

5. I would therefore allow the appeal with costs, and let the execution proceed as in a rent execution under the Bengal Tenancy Act. The appellants are also entitled to their costs of the lower Court. Hearing fee, one gold mohur.

Courtney-Terrell, C.J.

6. I agree.