

(1900) 08 CAL CK 0013
In the Calcutta High Court

Troylokhyanath Bose and Others

APPELLANT

Vs

V.M.N. Macleod and Others

RESPONDENT

Date of Decision : 27-08-1900

Acts Referred:

Bengal Tenancy Act, 1885 — Section 101, 111A
Civil Procedure Code, 1882 — Section 11
Civil Procedure Code, 1908 (CPC) — Section 12

Citation : (1901) ILR (Cal) 28

Hon'ble Judges : Stevens, J;Pratt, J

Bench : Division Bench

Judgement

Stevens, J.—The facts out of which this appeal arises, so far as it is necessary to state them for the purposes of the appeal, are as follows: The plaintiffs are purchasers of the proprietary right in three villages. They sue the defendants for direct possession of certain plots of land in those villages and for mesne profits. The Case of the defendants is that they have a tenant-right in those lands, and that their right was recognized by the predecessors in title of the plaintiffs. It is an admitted fact that at the time when the present suit was instituted an order had been made, u/s 101, oh. X of the Bengal Tenancy Act, for a survey and a record-of-rights in respect of the villages in question; that the defendants had been recorded as tenants of the lands in suit; that the plaintiffs had objected, and that their objections were pending before the Revenue Officer.

2. A preliminary objection was raised by the defendants that the suit was not maintainable according to law. It appears from the judgment of the Lower Court that three provisions of law were cited in support of that objection, namely, first Section 104-H (8) of the Bengal Tenancy Act as amended by the Bengal Tenancy Amendment Act of 1898; secondly Section 111; and thirdly Section 111-A. The learned District Judge, as we think, quite rightly, held that the case was not governed by the provisions of Section 104-H (8) or Section 111-A; but he held that it was barred u/s 111 of the Bengal Tenancy Act and further that it was also barred u/s 12 of the Code of Civil Procedure.

3. He passed an order allowing the plaintiffs to withdraw their suit within ten days without prejudice to their right to sue sthereafter on the same subject-matter in a competent Court; and, on the suit not being withdrawn within the time specified in that order, he dismissed it with cost and interests.

4. The plaintiffs now appeal from that decree of dismissal.

5. It seems to us that the decree of the Lower Court cannot be supported on either of the grounds on which it was made with reference to Section 111 of the Bengal Tenancy Act. The learned Judge refers to paragraph 15 of the plaint as containing an admission by the plaintiff's that the defendants were admitted by the predecessors of the plaintiffs as tenants for a term of fifteen years, which has not yet expired, although the plaintiffs allege that the lease was infructuous and conferred no rights on the defendants. The learned Judge says that it appears to him that the defendants on these data must be found to be tenants within the meaning of the Act; that assuming that the lease granted to them was infructuous or invalid, they would still be tenants-at-will and liable to be ejected only under the law for ejectment of such tenants; that, therefore, the determination of the status of the defendants' tenancy is the main contention between the parties; and that as the Court is debarred from determining the defendant's status, it cannot proceed to the other issues.

6. This conclusion appears to be based upon an erroneous impression as to what the case of the plaintiffs really was. The learned Judge is in error in supposing that in the 15th paragraph of the plaint the plaintiffs made any admission. They merely said that the defendants themselves alleged that they had obtained a lease of the lands in question, at the same time stating that "the said alleged patta" was infructuous and conferred no rights on the defendants. In the 22nd paragraph of the plaint the plaintiffs in perfectly distinct terms deny the allegations of the defendants as to tenant-right. They say: "The plaintiffs, on the other hand, allege that the defendants have not, nor ever had, any rayati or kashtkari right in or to the said plots of land or any of them, and they submit that the defendants are not entitled to retain possession of the said lands in suit or any of them."

7. In fact the plaintiffs, rightly or wrongly, sue the defendants as mere trespassers for ejectment and for mesne profits. What is barred by Section 111 of the Tenancy Act is the entertainment by a Civil Court of any suit or application for the determination of the status of any tenant in the area to which the record-of-rights applies until three months after the final publication of the record-of-rights. (We quote the substance of the section so far only as it is applicable to the present case). This suit is not brought for the determination of the status of any tenant. The allegation of the defendants that they are tenants is denied altogether and the suit is, as we have said, one for ejectment of trespassers: consequently Section 111 has no application to the present case.

8. With regard to Section 12 of the Code of the Civil Procedure, we are quite clear

that it had been misapplied by the learned District Judge, and the learned Counsel for, the defendants (respondents) admits that he is unable to support the decision of the Lower Court on that point. In the first place, the case cited by the Court below as an authority for the proposition that the proceedings of a Revenue Officer for the determination of objections u/s 103 of the Act are suits, to which the provisions of the CPC apply, namely, the case of *Achha Mian Chowdhry v. Durga Churu Law* (1) refers to the law as it stood before the amending Act of 1898 was passed, and is based upon the Rules framed by the Government u/s 189 of the Act as they then existed. The law as amended distinguishes between "objections" which, under the present rules of the Government, are disposed of summarily and "disputes" which are disposed of formally after the manner of suits. Besides, a fatal objection to the application of Section 12 of the CPC is that the previously instituted: suit must, under the provisions of that section, be for the same relief and must be pending in a Court having jurisdiction to grant such relief. It is clear that in this case the proceedings pending before the Revenue Officer were not for the same relief (that is, for ejectment of the defendants and for mesne profits) as was sought in the present suit, nor had the Revenue Officer jurisdiction to grant such relief.

9. In order to determine the question whether or not the present suit is maintainable in the Civil Court, we have to start with the general rule laid down in Section 11 of the Code of Civil Procedure, that "the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force," and we have to see whether there is any enactment now in force barring the cognizance of the Civil Court in respect of a suit like the present one. The provisions of the Bengal Tenancy Act ousting the jurisdiction of the Civil Courts in respect of the proceedings of Revenue Officers (leaving out of consideration those which relate to settlement of rents, with which we are not concerned in this case) are Sections 109, 111 and 111-A. We have already held that Section 111 does not apply to this suit, because it is not a suit for the determination of the status of a tenant. The learned Judge of the Court below has held that, Section 111-A does not apply, and we concur with him in that view.

10. There remains Section 109. That section provides that, subject to the provisions of Section 109-A, which deals with appeals, a Civil Court shall not entertain any application or suit concerning any matter which is, or has already been, the subject of an application made, or suit instituted u/s 105, Section 106, Section 107 or Section 108. We are not concerned with Section 105, which relates to settlement of rents, nor with Section 108, which refers to revision by a Revenue Officer of an order or decision u/s 105, Section 106, or Section 107. Section 106 provides that if a dispute arise at any time within two months from the date of the certificate of the publication of the record-of-rights u/s 103-A, Sub-section 2, regarding any entry which the Revenue Officer has made in, or any omission made from, the record, a suit may be instituted before the Revenue Officer by presenting a plaint on stamped paper for the decision of the

dispute, and the Revenue Officer shall then hear and decide the dispute.

11. Section 107 provides for the procedure to be adopted by a Revenue Officer in proceedings for the settlement of rents and in proceedings u/s 106, and it provides, further, that a note of all rents settled and of all decisions of disputes shall be made by him in the record-of-rights finally published. In the present case no suit u/s 106 was, in fact, instituted, nor could it be instituted, because the record-of rights had not at that time been published, and, indeed, as we understand, the objections made, by the plaintiffs had not been even summarily determined under the provisions of Section 103-A. That being so, it does not appear how Section 109 can apply to the facts of the present case. It applies only where the matter in question is or has already been the subject of a suit instituted u/s 106. Neither that section nor Section 106 itself renders the institution of a suit u/s 106 compulsory, or prevents the institution of a suit like the present directly in a Civil Court. It has been contended by the learned Counsel for the respondents that the mere fact that the Legislature has provided a special procedure such as that, specified in Section 106 for the decision of disputes arising out of proceedings under ch. X of "Bengal Tenancy Act is sufficient to oust the jurisdiction of the Civil Courts without any express enactment. We are unable to accede to that view, especially in the presence of the fact that the jurisdiction of the Civil Courts has been in several instances barred by express enactment in ch. X. Referring particularly to Section 109, we think it is a necessary inference from the fact that the Civil Courts are forbidden to entertain a suit concerning a matter which is, or has already been, the subject of a suit instituted u/s 106, that their jurisdiction is not barred in respect of a matter which has not been made the subject of such a suit.

12. It has been urged in argument that even if the appellants succeed in this appeal, they will not be able to obtain any practical benefit as the result of the success. We do not express any opinion as to what the position of the appellants will be in respect of any entry that may have been made against them by the Revenue Officer, for that matter is not before us. The only question with which we have to deal is whether or not there is any legal bar to their maintaining the present suit, and we must hold for the reasons which we have given that there is no such bar.

13. We decree the appeal and remand the case to the Lower Court to be disposed of on the merits.

14. The costs will abide the result.

15. The Court-fee paid by the appellants on the memorandum of appeal will be refunded to them.