

very inequitable one. The plaintiff in this litigation has ignored this view and has entirely misconceived his remedy. He has never offered to reimburse the defendant; for there is no question that the transfer in favour of the defendant must have been for the benefit of the infant whose property was under attachment at the time. We have considered whether the plaintiff may at this stage legitimately expect an opportunity to set matters right, and we have arrived at the conclusion that the answer should be in the negative, as he should not be permitted to change the whole aspect of the case.

We consequently affirm the decree of dismissal made by Mr. Justice Huda, but not on the grounds stated in his judgment, and dismiss the appeal, with costs.

S. M. M.

Appeal dismissed.

LETTERS PATENT APPEAL.

Before Mookerjee and Cuming JJ.

PRASANNA KUMAR SEN

v.

DURGA CHARAN OHAKRAVARTI.*

*Enhancement of Rent—Bengal Tenancy Act (VIII of 1885) ss. 50,
115—Presumption under s. 50—Applicability of s. 115.*

In a suit by plaintiff landlord in 1918 for enhancement of rent on the ground of rise in the price of staple food crops where the tenant in 1914 was recorded as an occupancy raiyat in the finally published record of rights, the tenant defendant resisted the claim on the ground that he was a raiyat at a fixed rate and invoked the aid of s. 5 of the Bengal Tenancy Act and claimed the benefit of the presumption mentioned therein :

* Letters Patent Appeal No. 13 of 1921, in Appeal from Appellate Decree No. 2319 of 1919.

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Held (affirming the decision of Teunon J.), that the express terms of s. 115 of the Bengal Tenancy Act excludes any such presumption under s. 50.

Harihar Persad Bajpai v. Ajub Misser (1), *Muralidhar Aditya v. Radha Mohan Hazra* (2) approved.

Secretary of State for India in Council v. Kajimuddi (3), *Radha Kishor Manikya v. Bande Ali* (4) dissented from.

Section 50 of the Bengal Tenancy Act does not contemplate a case in which a raiyat is seeking to get the benefit of the presumption for a period subsequent to the time when the record of rights was framed.

The expression "thereafter" in s. 115, clearly signifies "after the particulars have been finally recorded after recourse to all the provisions contained in Chapter X for the attainment of finality in this respect."

Pirithi Chand Lal Chowdhury v. Basarat Ali (5) followed.

THIS was a suit by Durga Charan Chakravarti, the plaintiff, for enhancement of rent. The Court of first instance decreed the plaintiff's suit, but on appeal the Subordinate Judge set aside the said decree and disallowed the claim for enhancement of rent. On second appeal to this Court, Teunon J. (sitting singly) reversed the decision of the Subordinate Judge and remanded the case to him in order "that approaching the case from the proper standpoint, namely, that the tenant is not entitled to the benefit of the presumption arising under sec. 50, he may consider and determine whether the rent is or is not liable to be enhanced and if so to what extent."

Hence this appeal under clause 15 of the Letters Patent by Prasanna Kumar Sen, the defendant, which was heard by Mookerjee and Cuming JJ.

Babu Gunada Charan Sen and Babu Jnan Chandra Roy, for the appellant.

(1) (1913) I. L. R. 45 Calc. 930.

(3) (1899) I. L. R. 26 Calc. 617.

(2) (1919) 51 I. C. 552.

(4) (1908) 12. C. W. N. 904.

(5) (1909) I. L. R. 37 Calc. 30 (F. B.).

Babu Surendra Chandra Sen, Babu Hemendra Chandra Sen and Babu Rajendra Nath Bakshi, for the respondent.

Cur. adv. vult.

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MOOKERJEE AND CUMING JJ. This is an appeal under clause 15 of the Letters Patent from the judgment of Mr. Justice Tennon in a suit for enhancement of rent.

It appears that a record of rights was published in 1914 and an entry was made therein to the effect that the tenant defendant was a (স্থিতিবান রায়ৎ), that is, an occupancy raiyat. On the 30th January 1918, the plaintiff landlord instituted the present suit for enhancement of rent on the ground of rise in the price of staple food crops. The defendant resisted the claim on the ground that he was a raiyat at fixed rate, and in support of this allegation he invoked the aid of section 50 of the Bengal Tenancy Act. His contention was negatived by the primary Court and the claim for enhancement was allowed. Upon appeal the Subordinate Judge held that the defendant was entitled to the benefit of the presumption mentioned in section 50 and disallowed the claim for enhancement. Upon appeal to this Court, Mr. Justice Tennon has reversed the decision of the Subordinate Judge on the ground that under section 115 the tenant was not entitled to rely upon the presumption mentioned in section 50; in support of this view, reference has been made to the cases of *Harihar Persad Bajpai v. Ajub Misser* (1) and *Mur lidhar Aditya v. Radha Mohan Hazra* (2). On the present appeal, the view taken by Mr. Justice Tennon has been assailed as contrary to the decision in *Secretary of State for India in*

(1) (1913) I. L. R. 45 Calc. 930.

(2) (1919) 51 I. C. 552.

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Council v. Kajimuddi (1) and *Radha Kishore Manikya v. Bande Ali* (2). we are of opinion that section 115 was not correctly interpreted in the decisions mentioned, which are in conflict with the principle of the decision of the Full Bench in *Prithi Chand Lal Chowdhury v. Basarat Ali* (3).

Section 115 provides that when the particulars mentioned in section 102, clause (b), have been recorded under Chapter X of the Bengal Tenancy Act, in respect of any tenancy, the presumption under sect. ^{part} 50 shall not thereafter apply to that tenancy. On behalf of the appellant, reliance has been placed upon the *dictum* in the case of *Secretary of State for India in Council v. Kajimuddi* (1) that this section seems to contemplate a case in which a raiyat is seeking to get the benefit of the presumption for a period subsequent to the time when the record of rights was framed. We are unable to accept this interpretation of the scope of section 115. The expression "thereafter" in that section clearly signifies "after the particulars have been finally recorded after recourse to all the provisions contained in Chapter X for the attainment of finality in this respect." This was the view adopted by the Full Bench in the case of *Pirithi Chand Lal Chowdhury v. Basarat Ali* (3) where it was ruled that section 115 did not exclude the application of the presumption when the particulars had been recorded under Chapter X and it was found necessary still to have recourse to the procedure prescribed by one or other of the sections in that Chapter. The case before us however is of an entirely different description. Here the record was finally published in 1914. The tenant might have, but did not, come within the prescribed time to get the record altered by recourse

(1) (1899) I. L. R. 26 Calc. 617. (2) (1908) 12. C. W. N. 904.

(3) (1909) I. L. R. 37. Calc. 30.

to one or other of the provisions of Chapter X. The result was that the record became final. A suit has now been instituted for enhancement of rent. This is not a suit instituted under Chapter X of the Bengal Tenancy Act. Consequently, in such a suit the tenant is not entitled to the benefit of the presumption under section 50. The entry which was made in this case under section 102 (b) was that the tenant belonged to the class of occupancy raiyats: in other words, that he was not a raiyat holding at a fixed rate. His rent was consequently liable to enhancement in accordance with the provisions of the Bengal Tenancy Act. The landlord claims to enhance the rent of the tenant. The tenant sets up the defence, that he is a raiyat holding at a fixed rate; and in support of this contention he relies upon the presumption mentioned in section 50. The presumption is excluded by the express terms of section 115 and is of no avail to him. In these circumstances, Mr. Justice Teunon has correctly held that the judgment of the Subordinate Judge, which was based upon the presumption under section 50, cannot be supported and that the case must be remanded for reconsideration from this standpoint. We are of opinion that this view is in accordance with the decision in *Bamandas Bidyasagar v. Sadhu Majhi* (1), where the judgment of Mr. Justice Teunon now under appeal was referred to with approval.

The result is that the judgment of Mr. Justice Teunon is affirmed and this appeal dismissed with costs.

S. M. M.

Appeal dismissed.

(1) (1921) 64 I. C. 445.

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