LETTERS PATENT APPEAL.

Before Mookerjee and Cuming JJ.

RAJENDRA NARAIN MAJUMDAR

v.

KALIM.*

1922

Feb. 10.

Enhancement of Rent—Bengal Tenancy Act (VIII of 1885); ss. 29(b), 105, 109 and 110.

In a suit instituted by the landlords on the 21st April 1917, claiming rent at the rate of Rs. 22-1 per year, in respect of 4 years from 14th April 1913 to 13th April 1917, where the claim was based on a kabuliat executed by the predecessors of the defendants on the 19th April 1894, the tenants contended that the kabuliat was in contravention of the provisions of s. 29(*b*) of the Bengal Tenancy Act and proved the rent as originally fixed in 1885 to be Rs. 12-2.

Held, that the increase of Rs. 9-15 was in contravention of s. 29, and as the previous rent of the tenant had been proved, it was for the plaintiffs to justify the enhancement claimed which was obviously in excess of the enhancement allowed by the statute.

Manindra Chandra Nundy v. *Upendra Chandra Hazra* (1) followed.

The plaintiffs however contended, *inter alia*, that they were entitled to the benefit of a decision under s. 105 of the Bengal Tenancy Act which was pronounced on the 19th September 1917, subsequent to the institution of the present suit and before the trial thereof. The proceeding under s. 105, was instituted in 1914.

It was argued that by virtue of s. 109 of the Bengal Tenancy Act, it was not open to the tenants to contend, contrary to the decision in the proceedings under s. 105, that the rent was payable, not at Rs. 22-1 but at Rs. 12-2.

Held, that what was barred under s. 109, was the entertainment of an application or suit and not the entertainment of a defence to an action.

Apurba Krishna Roy v. *Shyama Charan Pramanik* (2) distinguished.

*Letters Patent Appeal No. 78 of 1920 in Appeal from Appellate Decree No. 121 of 1919.

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Held, further, (affirming the judgment of Panton J.) that the fair rent which had been settled in a proceeding under s. 105, could not have retrospective effect.

Under s 110, the rent settled by the Revenue Officer would take effect from the beginning of the agricultural year next after the date of the decision fixing the rent.

The Court of first instance decreed the suit for enhancement of rent at the rate admitted by the defendants, viz., Rs. 12-2. On appeal to the Subordinate Judge that decision was upheld. On Second Appeal before the High Court, Panton J, sitting singly, confirmed the decree of the Subordinate Judge.

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

Babu Bankim Chandra Mukherjee (for *Babu Kali Kinkar Chuckerbutty*), for the appellants.

Babu Annada Charan Karkoon, for the respondents.

Cur. adv. vult

MOOKERJEE AND CUMING JJ. This is an appeal under Clause 15 of the Letters Patent from the judgment of Mr. Justice Panton in a suit for recovery of arrears of rent.

The plaintiffs claimed rent at the rate of Rs. 22-1 per year in respect of four years from the 14th April 1913 to the 13th April 1917. The defendants pleaded that rent was payable at the rate of Rs. 12-2 per annum. The suit was instituted on the 21st April 1917 and was decided by the first Court on the 16th April 1918. The claim of the plaintiffs was founded upon a *kabuliat* executed by the predecessors of the defendants on the 19th April 1894. The rent payable thereunder was that claimed in the suit. The defendants contended that the *kabuliat* was in contravention of section 29 (*b*) of the Bengal Tenancy Act.

The trial Court held that the defendants had successfully proved, by the production of road cess return filed by the landlords on the 26th May 1885, that the rent was originally fixed at the rate of Rs. 12-2. Consequently, there was, *prima facie*, an increase of Rs. 9-15 by means of the contract of the 19th April 1894. This was plainly in contravention of section 29. In these circumstances, from the decision of this Court in the case of *Manindra Chandra Nandy* v. *Upendra Chandra Hazra* (1), it followed that as the previous rent of the tenant had been proved, it was for the plaintiffs to justify the enhancement of the rent claimed which was obviously in excess of the enhancement allowed by the statute. The plaintiffs tried to discharge this burden by the allegation that at the time of the execution of the *kabuliat* it was discovered that the defendants were in occupation of excess lands. But this was not established to the satisfaction of the trial Judge who consequently held that the rent as fixed in the *kabuliat* was not recoverable. The plaintiffs, however, contended that they were entitled to the benefit of a decision under section 105 of the Bengal Tenancy Act which had been pronounced on the 19th September 1917 subsequent to the institution of this suit for arrears of rent and before the trial thereof. This contention was overruled and the rent was decreed at the rate admitted by the defendants. On appeal to the Subordinate Judge, the decision of the primary Court was affirmed and Mr. Justice Panton has confirmed the decree of the Subordinate Judge.

In this Court the substantial contention on behalf of the plaintiffs appellants is that by virtue of section 109, it is not open to the tenants to contend, contrary to the decision in the proceeding under

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section 105, that the rent was payable, not at the rate of Rs. 22-1 but at the rate of Rs. 12-2. In support of this proposition, reliance has been placed upon the decision of this Court in the case of *Apurba Krishna Roy* v. *Shyama Charan Paramanik* (1). We are of opinion that this contention cannot be supported, however much the plain language of section 109 may be strained.

Section 109 is in the following terms: "Subject to the provisions of section 109A, a Civil Court shall not entertain any application or suit concerning any matter which is or has been the subject of an application made, suit instituted or proceedings taken under sections 105 to 108 both inclusive". Let it be assumed for the moment that the expression "entertain an application or suit" includes an application or suit made or instituted before the date of the application, suit, or proceeding under sections 105 to 108. It is clear that what is barred is the entertainment of an application or suit and not the entertainment of a defence to an application or suit. In the case before us, if the contention of the appellants were to prevail, the Court would be incompetent to entertain their suit for rent, and this undoubtedly is not their object in invoking the aid of section 109. The decision in *Apurba Krishna Roy* v. *Shyama Charan Paramanik* (1) is of no assistance to them. It was there ruled that Section 109 was a bar to a civil suit by a person claiming a rent-free title, when, in a proceeding under section 105, the same question arose and rent was assessed on account of the failure of the defendant in the proceeding under section 105 to adduce evidence in support of his allegation of the rent-free title. In that case, the suit which was held to be barred under section 109, had been instituted by

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the tenant who had failed to adduce evidence in support of his defence in the proceedings for settlement of fair rent under section 105. In the present case, the suit has been instituted by the landlord. It is clear that the fair rent which had been settled in the proceeding under section 105 cannot possibly have retrospective effect. The rent was claimed from the 14th April 1913 to the 13th April 1917. The proceeding for the assessment of fair rent was instituted under section 105 in 1914, and the decision thereunder was pronounced on the 19th September 1917. Under section 110, the rent settled by the Revenue Officer would take effect from the beginning of the agricultural year next after the date of the decision fixing the rent: that is, next after the 19th September 1917. This could not alter the liability for rent already incurred in respect of the period between the 14th April 1913 and the 13th April 1917. We are clearly of opinion that the view taken by Mr. Justice Panton is correct and his judgment must be affirmed.

The appeal is accordingly dismissed with costs.

S. M. M. *Appeal dismissed.*