LETTERS PATENT APPEAL.

Before Mookerjee and Panton JJ.

1921

Aug. 2.

SUDHANNA SANTRA

v.

BASANTA KUMAR SARKAR.*

Rent, suit for—Bengal Tenancy Act (VIII of 1885) s. 153—Suit for rent valued at less than Rs. 50—Denial of plaintiff's title to a share of rent claimed—Appeal, competency of—"Amount of rent annually payable," meaning of.

Where the trial Court which was empowered to exercise final jurisdiction under s. 153 of the Bengal Tenancy Act, decided in a suit for rent that the plaintiff was entitled to the whole rent as claimed by him and not to a share of it as alleged by the defendant :

Held, that this was a decision of the question of the amount of rent annually payable by the tenant within the meaning of section 153 of the Bengal Tenancy Act and consequently was appealable.

Narain Mahton v. *Manofi* (1) referred to.

The expression "amount annually payable by the tenant" signifies the amount annually payable by the tenant to the landlord who had instituted the suit for the recovery of rent.

APPEAL by Sudhanna Santra and another, the defendants.

This appeal arises out of a suit brought by the plaintiffs for the recovery of arrears of rent amounting to less than Rs. 50, which was tried in the Court of first instance by a Judicial Officer specially empowered under section 153 of the Bengal Tenancy Act. The suit was decided in favour of the plaintiffs and the defendants appealed to the District Judge against the decision, this was summarily dismissed on the ground

* Letters Patent Appeal No. 68 of 1920 in Appeal from Appellate Decree No. 2786 of 1919.

(1) (1890) I. L. R. 17 Calc. 489.

that no appeal lay, the defendants thereupon preferred a second appeal before the High Court which came on for hearing before Newbould J. who affirmed the decision of the District Judge.

The defendants then appealed under clause 15 of the Letters Patent from the judgment of Newbould J.

Babu Nagendra Nath Ghose and *Babu Khitish Chandra Chakravarti*, for the appellants.

Babu Manmohan Banerjee, for the respondents.

MOOKERJEE AND PANTON JJ. This is an appeal under cl. 15 of the Letters Patent from the judgment of Mr. Justice Newbould in a suit for arrears of rent.

The suit was tried in the Court of first instance by a judicial officer specially empowered by the Local Government to exercise final jurisdiction under section 153 of the Bengal Tenancy Act and the amount claimed in the suit did not exceed Rs. 50. The suit was decreed with costs in favour of the plaintiff. Thereupon the defendant preferred an appeal to the District Judge. This was summarily dismissed under Order XLI, r. 11 of the Civil Procedure Code, on the ground that no appeal lay on the authority of the decision in *Baidya Nath* v. *Dhon Krishna* (1). A second appeal was thereupon preferred to this Court. In support of the appeal it was argued before Mr. Justice Newbould that the appeal to the District Judge was competent inasmuch as the decree of the primary Court had decided a question of the amount annually payable by the tenant. This contention was overruled and the decree of the District Judge was affirmed. Consequently, the point involved in the present appeal is, whether the appeal to the District Judge was or was not competent under section 153 of the Bengal

(1) (1900) 5 C. W. N. 515.

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Tenancy Act. The determination of the question depends on the nature and contents of the decree made by the Court of first instance.

The suit was brought to recover arrears of rent at the rate of Rs. 8-3-4 pies a year with cesses and damages for a period of four years. The case for the plaintiff was that in Mouzah Shapkhali he had inherited 6 as. 8 gds. share in *maliki* right from his mother Sarada Sundari Dassi and 9 as. 12 gds. share in *ijara* right from his father Ram Narain Sarkar. On this allegation the plaintiff sought to collect the sixteen annas rent from the tenant defendants who were in occupation of 3 bighas 16 cottahs of land at a rental of Rs. 8-3-4 pies. The first defendant who alone entered appearance admitted that the plaintiff had *maliki* right to the extent of a 6 as. 8 gds. share inherited from his mother, but denied the existence of the alleged *ijara* right during the period in suit. Consequently the point arose for decision, whether there was an *ijara* of a 9 as. 12 gds. share in favour of Ram Narain Sarkar and whether the plaintiff had inherited that share; in other words, was the defendant liable to pay the sixteen annas share or only 6 as. 8 gds. share of the rent to the plaintiff. The trial court came to the conclusion that not only the *maliki* right but also the *ijara* right was in existence and that the plaintiff was consequently entitled to realize from the defendant the entire sixteen annas rent claimed. On these facts the question arises, whether the decree of the trial Court decided a question of the amount annually payable by the tenant. If the expression "amount annually payable by the tenant" signifies the amount annually payable by the tenant in respect of the tenancy, there was no controversy between the parties and no decision on a disputed question, because they were agreed that the

rent of the holding was Rs. 8-3-4 pies a year. On the other hand, if the expression "amount annually payable by the tenant" signifies the amount annually payable by the tenant to the landlord who had instituted the suit for recovery of rent, as stated in an earlier part of the sub-section, there was a substantial point in controversy, namely, whether the amount payable by the defendant to the plaintiff was to be calculated at the rate of Rs. 8-3-4 pies a year or at the rate of two-fifths of that sum.

The determination of this question at one time led to a divergence of judicial opinion in this Court, as is clear from the decisions in *Prasanna Kumar* v. *Srinath* (1) and *Aubhoy Charan* v. *Shishi Bhusan* (2). In the first case, Norris and Beverley JJ. held that when the question was whether the plaintiff was entitled to the whole sixteen annas of the rent or only to a ten annas share of it, no appeal lay, because there was no question of the amount of rent annually payable by a tenant, these words in the section meaning the total amount of rent annually payable in respect of a holding and not the amount of rent which may be payable to any particular co-sharer in the property. In the second case, where the tenant was sued for a rental of Rs. 15 but the defendant contended that this rental had been divided and that the plaintiff was entitled only to a rent of Rs. 7-8 which was half of the total amount of rent payable by the tenant, Mitter and Macpherson JJ. held that an appeal did lie, as the decree of the lower Court had decided that the rent was Rs. 15 and not Rs. 7-8, which was in essence a decision on the question of the amount of rent annually payable by the tenant. These decisions were obviously in direct conflict with each other and

(1) (1887) I. L. R. 15 Calc. 231. (2) (1888) I. L. R. 16 Calc. 155.

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led to a reference to a Full Bench in *Narain Mahton* v *Manofi* (1). In that case the plaintiff contended that he was entitled to an eight annas share of the rent of the disputed holding. The defendant contended that the plaintiff was entitled to eight pies share of the rent which was the extent of his share in the superior interest. It was ruled that an appeal lay against the decree which had decided whether the plaintiff was entitled to eight annas share or eight pies share of the rent. Mr. Justice Pigot who delivered the judgment of the Full Bench stated that the Full Bench agreed with the decision of Macpherson and Mitter JJ., in the case of *Aubhoy Charan* v. *Shosi Bhusan* (2). Although in the judgment of the Full Bench, reference is not expressly made to the decision of Norris and Beverley JJ., in *Prasanna Kumar* v. *Srinath* (3), which we find was mentioned in the Order of Reference to the Full Bench, there can be no doubt that the decision in that case was overruled by the Full Bench.

In this view it is clear that in the present case, the decree of the primary Court which had decided the question, whether the plaintiff was entitled to the whole rent as claimed by him or only to a two-fifths share as asserted by the defendant, was a decision of the question of the amount of the rent annually payable by the tenant within the meaning of section 153 of the Bengal Tenancy Act and consequently the appeal to the District Judge was competent. This view is in accord with the decision in *Poresh Moni* v. *Nobokishore* (4) and *Bahshiram* v. *Srinath* (5). The decision of Beachcroft J. in the case last mentioned was, we are informed, ultimately approved by Chitty

(1) (1890) I. L. R. 17 Calc. 489.
(2) (1888) I. L. R. 16 Calc. 155.
(3) (1887) I. L. R. 15 Calc. 231.
(4) (1903) 8 C. W. N. 193.
(5) (1919) 23 C. W. N. 76 Notes.

and Walmsley JJ. by the dismissal of an appeal preferred under the Letters Patent. It may be difficult to reconcile the view with the decision of Geidt J. in *Fakeer Mondul* v. *Arshad Molla* (1) which, it should not be overlooked, was pronounced before the decision in *Poresh Moni* v. *Nobokishore* (2). On the other hand, the cases of *Baidya Nath* v. *Dhon Krishna* (3) and *Ram Mohan* v. *Badan Barai* (4), are distinguishable on the ground that in each of them the question in controversy was whether the relationship of landlord and tenant existed between the parties. In that class of cases, it has been uniformly held [*Shilabati* v. *Roderigues* (5)] that the question whether the relationship of landlord and tenant does or does not subsist between the parties is not a question of title to land or to some interest in land as between parties having conflicting claims thereto within the meaning of section 153 of the Bengal Tenancy Act, nor can the decision of such a question be treated as a decision of the question of the amount of rent annually payable by the tenant, because no question of the amount annually payable by a tenant can obviously arise for consideration, till it has been ascertained that the relationship of landlord and tenant existed between the parties. It is only in the event of the establishment of such a relationship that a question may arise as to the amount of rent annually payable by the tenant to the landlord.

We are of opinion that this appeal must be allowed, the judgment of Mr. Justice Newbould, set aside and the case remanded to the District Judge to be heard on the merits. The appellant is entitled to his costs both here and before Mr. Justice Newbould.

A. S. M. A. *Appeal allowed.*

(1) (1906) 10 C. W. N. 280 Notes.
(2) (1903) 8 C. W. N. 193.
(3) (1900) 5 C. W. N. 515.
(4) (1903) 8 C. W. N. 436.
(5) (1908) I. L. R. 35 Calc. 547 ; 12 C. W. N. 448.