

CIVIL REVISION.

Before Mallik J.

ASIKANNESSA BIBI

v.

DWIJENDRAKRISHNA DATTA.*

1930

March 18.

Tenancy—Bengal Tenancy Act (VIII of 1885), as amended by Beng. Act IV of 1928, s. 174, cl. (5), whether retrospective in effect.

The provisions of clause (5) of section 174 of the Bengal Tenancy Act, as amended by Bengal Act IV of 1928, have no retrospective effect and do not apply to appeals arising out of applications filed before the date when the amendment came into force, as they create new obligations upon the appellant and put restrictions on a vested right, *viz.*, right to appeal.

CIVIL RULE obtained by the tenant.

The landlord, the opposite party No. 1, obtained a decree against the petitioner, the tenant, for rent, and, in execution of the decree, the petitioner's holding was sold by auction on 25th October, 1922, and was purchased by opposite party No. 2. The petitioner came to know of the sale in August, 1927, and filed an application for setting aside the sale under Order XXI, rule 21, on the ground that it was brought about by fraud and suppression of notice, and that it was concealed from her knowledge by the opposite party. The Munsif dismissed the application on the 22nd June, 1929, and the petitioner preferred an appeal to the District Judge. The District Judge held that, as the appeal was made by the judgment-debtor, who had not deposited the decretal amount in court, as required under the provisions of the amended Bengal Tenancy Act, it could not be admitted, and, ordered the memorandum of appeal to be returned to the petitioner.

The petitioner, thereupon, moved the High Court and obtained the present Rule.

*Civil Revision, No. 1525 of 1929, against the order of J. M. Pringle, District Judge of Alipur, dated July 29, 1929, affirming the decision of the Munsif of Basirhat, dated June 22, 1929.

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Sateendranath Ray Chaudhuri for the petitioner.

Gourmohan Datta for the opposite party.

MALLIK J. The facts which have given rise to the present Rule were briefly these. On the 22nd August, 1927, there was an application made by the petitioners for setting aside a sale under Order XXI, rule 90, of the Code of Civil Procedure. This application was dismissed on the 22nd June, 1929. Against the order of dismissal, the petitioners wanted to file an appeal before the District Judge, but the learned District Judge refused to admit the appeal on the ground that the petitioners had not deposited the decretal money. It was against this order of the learned District Judge that the petitioners obtained the present Rule.

If the proviso under section 174 (5) of the Bengal Tenancy Act was applicable to the present case, there can be no doubt that the learned District Judge was perfectly correct in refusing to admit the appeal, the petitioners not having deposited the decretal money. But the question is whether the proviso under the subsection can be said to apply to the present case. The new amendment of section 174, relating to the deposit of the decretal money, came into force in 1929, long after the application under Order XXI, rule 90, had been made. The point that would arise for consideration, therefore, would be whether this new amendment can be said to have any retrospective effect. I am inclined to think that it cannot. Maxwell in his treatise on the Interpretation of Statutes (7th Edition, page 187) says, "Every Statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed to be intended not to have a retrospective operation." There can be no doubt that before the new amendment came into operation the petitioners had a vested right, the right to appeal, and there can be no doubt either that by the amending

section not only were certain restrictions put on that vested right, but a new obligation also was created upon the petitioners. That being so, the new law as enacted under section 174 of the Bengal Tenancy Act could not, in my judgment, have any retrospective effect, and, in my opinion, the admission of the petitioners' appeal ought not to have been refused, only because the petitioners had not fulfilled a certain obligation that was created upon them under the new amending Act.

The Rule is, accordingly, made absolute with costs one gold mohur.

Rule absolute.

A. A.

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