REFERENCE UNDER THE COURT-FEES ACT.

Before Mukerji J.

PRASANNADEB RAIKAT

v.

POORNACHANDRA SHAHA.*

1934

Feb. 23, 27.

Court-fee—Suit for enhancement of rent of a tenure, Court-fees payable in—Tenure-holder, if tenant within the meaning of Court-fees Act—Tenure-holder occupying part of tenure, if a tenant "having right of occupancy"—Court-fees Act (VII of 1870), ss. 7i, ii, iv(c), xi(b); Sch. I, Art 1; Sch. II, Art. 2.

The provisions of Article 1 of schedule I of the Court-fees Act of 1870 [and not those of sub-sections i, ii, iv(c) and xi (*b*) of section 7, nor of Article 2 of schedule II of the Act] govern the assessment of court-fees payable for a suit for enhancement of rent of a tenure-holder without any prayer for recovery of rent of any period. The value of such a suit is the enhancement of rent claimed.

A tenure-holder is a tenant within the meaning of section 7xi of the Court-fees Act of 1870; and the words "right of occupancy" used in clause (*b*) of that sub-section, are to be understood in the popular and more general sense of a right by virtue of which a tenant remains in actual and physical possession, as it were, of the tenancy, and so does not include the rights of a tenure-holder.

A tenure-holder, occupying a part of his tenure, is none the less a tenure-holder.

REFERENCE under section 5 of the Court-fees Act, 1870.

The plaintiff-appellant, who is the proprietor, filed a suit praying for enhancement of rent of the defendant (tenure-holders) from the existing rent of Rs. 32-14 a year to Rs. 2,000 a year without any prayer for recovery of rent for any period.

The question raised was, how such a plaint or memorandum of appeal should be valued. On that question, there was a difference of opinion between

*Reference under the Court-fees Act made by the Registrar, Appellate Side, High Court, dated Jan. 22, 1934, in Appeal from Appellate Decree, File No. 5584 of 1934.

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the Stamp Reporter and the advocate for the plaintiff-appellant. Thereupon, the matter was referred to the Registrar, Appellate Side, as Taxing Officer, who made this reference raising the following questions :—

1. Is a tenure-holder a tenant within the meaning of section 7xi and, if so what is the meaning of the additional words to clause (*b*), *viz.*, "having a right of occupancy"?

2. If a tenure-holder is a tenant for this purpose, is he included in the term "having a right of occupancy", if he in fact occupies any part of his tenure ?

3. If a tenure-holder cannot be a tenant having a right of occupancy, under what clause of the section is a suit for enhancement of the rent of a tenure to be assessed for the purposes of the court-fees ?

Jitendrakumar Sen Gupta and *Rajendrabhooshan Bakshi* for the appellant.

Saratchandra Basak and *Roopendrakumar Mitra* for the Government.

Cur. adv. vult.

MUKERJI J. In the suit, which has given rise to this Reference, the plaintiff, the proprietor, prayed for enhancement of the rent of the defendants, who are tenure-holders. The existing rent of the tenure was Rs. 32-14 as. per year, and the prayer was to enhance it to Rs. 2,000 a year. There was no prayer for recovery of rent for any period.

The two rival contentions urged before me are as follows :—

On behalf of the Government, it has been contended that the case comes under section 7 ii of the Court-fees Act, 1870 : while it has been urged on behalf of the plaintiff, now appellant, that the computation should be as under section 7 xi (*b*) of the Act.

The report of the Stamp Reporter was in these words :—

In such cases, court-fees are payable under section 7 i, as in the case of claims for money. The plaintiff, having claimed rent at this rate, can be said to be claiming that amount of money. If it be said that the rent is a periodical payment, then it would come under section 7 ii.

The report of the Taxing Officer shows that before him the Stamp Reporter relied, and perhaps more strongly, on section 7 iv (*c*), urging that the suit was to obtain a declaratory order, *viz.*,

> the liability of the tenure to enhancement, with a consequential relief, *viz.*, the finding that the amount of enhancement is due.

Before me, it has not been, as indeed it cannot be, said on behalf of the Government that section 7 i applies because the suit is not a suit for recovery of money, as it must be, to come within that provision. So far as paragraph ii of section 7 is concerned, it is not easy to hold that a claim, seeking to establish a right to maintenance or to annuity at a certain amount, is similar to a claim seeking to have the existing rent enhanced to a certain figure, though rent, in itself, may be a sum periodically payable. I agree in the view taken by Das J. of the Patna High Court in the case of *Kali Charan Roy* v. *Kesho Prasad Singh* (1) that the words "other sums payable "periodically" in section 7 ii must be construed as implying sums payable in the nature of maintenance and annuities, upon the rule of *ejusdem generis*—a view which has been maintained in later decisions of that Court. It is true that suits for arrears of rent are suits for money within section 7 i, but that is not because arrears of rent come within the expression "arrears of other sums" used in that paragraph, but because it comes within the word "money" used therein. The word "money" used in that paragraph *includes* and, therefore, is of wider import than the several items mentioned within brackets in that paragraph. "Maintenance" is a term which is well understood and needs no explanation,—importing ordinarily a conception of amounts payable for life to a person by virtue of his standing in a particular relationship with somebody else, and, though the obligation to make the payment may often be defined in a contract, the original relationship which gives rise to the obligation is not

(1) (1919) 4 Pat. L. J. 561.

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necessarily contractual. "Annuity" is "a yearly "payment of a certain sum of money granted to "another in fee for life or years, charging the person "only," see Co. Litt. 144 (b). Rent, though payable periodically, is payable on account of a relationship of landlord and tenant, which, in its nature, is essentially contractual, and so represents a consideration which has got its counterpart. The contention of the Government, in my opinion, is not well-founded.

Section 7 iv (*c*) also, in my opinion, cannot apply, for there is no consequential relief really asked for in the case, even if it is conceded that what is asked for is in the nature of a declaration. Although various forms of declaration may be asked for as ancillary to a prayer for a consequential relief, a declaration, without any prayer for a consequential relief, in order to be maintainable, must be only a declaration that the plaintiff is entitled to a legal character or to any right to any property: *Deokali Koer* v. *Kedar Nath* (1). The prayer, in the present case, cannot be construed as for a declaration of that character; and so schedule II, Article 17, also, in my opinion, will have no application.

The contention of the plaintiff-appellant also, in my opinion, is equally untenable. Paragraph xi of section 7 deals with certain suits between landlord and tenant. When the Court-fees Act of 1870 was enacted, there was before the legislature Bengal Act VIII of 1869, which was only a reproduction of Act X of 1859 with its procedural portion amended. The latter Act was an Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal. There was no other Act of the legislature relating to the law as to landlord and tenant in other places. Even a cursory examination of the provisions of paragraph xi of section 7 will satisfy one that the draftsman of the paragraph had before him either Act X of 1859 or Bengal Act VIII of 1869. In paragraph xi of section 7, the word "tenant" is used

(1) (1912) I. L. R. 39 Calc. 704.

and that word must necessarily be taken as implying all kinds of tenants. But, in the different clauses of the paragraph, the word "tenant", wherever used, has either been left unqualified or has been qualified by other words or expressions. In clause (*a*), the word "tenant" has been used without any qualification; in clause (*b*) we find the expression "tenant having a "right of occupancy"; in clause (*e*) appeared originally the expression "occupancy of land from which a "tenant has been illegally ejected by the landlord". Clause (*cc*) was introduced by Act VI of 1905, which also altered the word "land" to "immoveable "property" in clause (*e*) and also in the last sentence of the paragraph. It is not necessary to set out here the history of law as to landlord and tenant prior to Act X of 1859; much of it, so far as Bengal is concerned will be found in the judgment of Trevor J. in the Great Rent Case, *Thakooranee Dossee* v. *Bisheshur Mookerjee* (1). But it is important to note that—

> the expression "right of occupancy" was used for the first time by the legislature in 1859 and, instead of the classification of *râiyats* into the *khud-kâst* and *paikâst*, a new one was introduced, less complex in character, and with incidents more favourable to the cultivating classes. Possession and cultivation of land and payment of rent were all that were necessary to confer on the *râiyat* this "right of occupancy". *Vide* Mitra on Land Law of Bengal, 2nd Edition, page 337.

I have quoted the above extract only to show the cardinal elements in the conception of a "right of "occupancy".

There is no reason why the word "tenant", used in paragraph ix of section 7 should be understood in a limited sense, that is to say, as tenants in respect of agricultural and not of non-agricultural tenancies. But when one comes to read the clauses of that paragraph as they stood in the Court-fees Act of 1870, one cannot fail to find that most of the clauses were drafted with a view to be applied to some particular class or classes and not others out of the five classes of tenants contemplated by Act X of 1859 or Bengal Act VIII of 1869 and also to some of the different classes

(1) (1865) B. L. R. F. B. Vol. 202.

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of suits which were contemplated by those Acts. While this cannot be denied, the question to be considered is whether or not the legislature, in enacting the Court-fees Act of 1870, and using therein the words "occupancy" in section 7, clause ix(*e*), and "right of occupancy" [in section 7, clause ix(*b*) and Schedule II, Article 5] intended to limit the meaning of those words to the sense in which the expression "right of occupancy" was used in those Acts or in the later Acts of the legislature, *e.g.*, the Bengal Tenancy Act of 1885. To make the question further clear, I think I may give an example taken from Bengal Act VIII of 1869 itself, which, to my mind, is pertinent. In that Act, on the question of enhancement, there are sections 14 and 15, applying to the case of a *râiyat* holding without or on the expiry of a written engagement, there is section 16 applying to dependent *tâlukdârs* on intermediate tenure-holders, and there is also section 18 applying to the case of *râiyats* having a right of occupancy. In a suit for enhancement under that Act, was section 7, clause ix(*b*) intended to apply only if the suit was under the last mentioned section?

Now, although the expression "right of occupancy" was not used by the legislature anywhere in its statutes prior to Act X of 1859, the expression itself was not unknown. It had a meaning which was well understood and which was more comprehensive than what it received from the legislature in that Act. In this connection, I cannot do better than refer to the decision of the Judicial Committee, delivered by Sir Richard Colville in the case of *Radhika Chowdhrain* v. *Bamasundari Dasi* (1). The suit in that case was commenced before Act X of 1859 had come into operation. Dealing with the right of a Bengal *zemindâr* to enhance the rent of rent-paying lands within his *zemindâri* their Lordships explained the nature of his right and said—

> It (*i.e.*, a suit to enhance the rent) assumes that the defendant has some valid tenure or right of occupancy in the lands which are the subject of the suit.

(1) (1869) 4 B. L. R. (P. C.) 8 ; 13 M. I. A. 248.

Also,—

Regulation VIII of 1793, however, does not apply a uniform rule to all tenures and rights of occupancy. It may be broadly said that it divides them into two great classes, *viz.*, *tâluks* within the meaning of the 51st section and *raiyati* and other under-tenures for which provision is made by the 49th section.

Again,—

In the present suit the respondent has come into court treating the defendants to the suit as *râiyats* having a right of occupancy in certain lands at a variable rent.

This judgment, in my opinion, plainly indicates that there was a popular meaning attached to the expression "right of occupancy", wider than the meaning it came to have in Act X of 1859, and including such meanings as were subsequently given to it by other Acts of the legislature. At the same time, as the judgment also indicates, there was also a distinction between "tenures" and "rights of "occupancy", the latter expression denoting such rights under which a tenant could be in actual physical possession, as it were, of the subject matter, while by the former word a superior interest was meant. I am of opinion that it was in this sense that the expression "right of occupancy" was used by the legislature in the Court-fees Act of 1870. In clause (*e*), the word "occupancy" has been used; but it has not been said "from which a tenant having a right of "occupancy has been illegally ejected" but only "from "which a tenant has been illegally ejected;" and, therefore, the application of this clause, in my opinion, was not intended to be limited to *râiyats* with occupancy rights. In other words, in my opinion, the clause was not intended to be confined to cases arising under the proviso to section 22 of Bengal Act VIII of 1869. I think, I should agree in the view taken by the Madras High Court that the words "occupancy of land" and "ejected" are properly applicable to the case of *râiyats* or persons in actual physical possession rather than to others who hold superior interests. See *Palaniappa Chetti* v.

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Sithravelu Servai (1). The expression "right of "occupancy" has also been used in Schedule II, Article 5 of the Court-fees Act, 1870, and, as used there, the expression must include the interest of an occupancy *râiyat* [*Nurjahan* v. *Morfan Mundul* (2)], though I am not of opinion that it can be read as being synonymous with "a right of occupancy" under any of the Acts relating to landlord and tenant. I am, therefore, of opinion that the plaintiff appellant's contention cannot be acceded to.

The question then is, by what provision of the Court-fees Act, 1870, should the present suit be governed. I am disposed to take the view that the suit is based upon a plaint "not otherwise provided "for in this Act" within the meaning of Schedule I, Article 1 to the Act. The value of the suit, in my opinion, is the value of the relief asked for, namely, the enhancement which has been claimed. A claim for enhancement of rent is in one sense a claim for assessment of fair and equitable rent; indeed section 7 of the Bengal Tenancy Act itself says that the rent may be enhanced up to such limit as the court thinks fair and equitable. In the case of a claim for assessment of rent, where the tenancy is a yearly one, it has been held that Schedule I, Article 1 applies and that the value of the claim is the value of one year's rent: *Dhanukdhari Tewari* v. *Mani Sonar* (3). I see no reason why the claim for enhancement should not be dealt with on the same footing. I am of opinion that court-fees should have been paid on the plaint on Rs. 2,000 *minus* Rs. 32-14 as. and that the court-fees payable on the memorandum of appeal should be on Rs. 2,000 *minus* the amount up to which the rent was enhanced by the court below.

My answers to the question formulated by the Taxing Officer are the following :—

(1) A tenure-holder is a tenant within the meaning of section 7 xi; and the words "right of occupancy"

(1) (1907) I. L. R. 31 Mad. 14, 16. (2) (1882) 11 C. L. R. 91.
(3) (1926) I. L. R. 6 Pat 17.

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used in clause (*b*) of that section are to be understood in the popular and more general sense of a right by virtue of which a tenant remains in actual and physical possession, as it were, of the tenancy and so do not include the rights of a tenure-holder.

(2) Yes. This would not make him any the less a tenure-holder. *Vide* section 7, sub-section (*4*) of the Bengal Tenancy Act, which speaks of a tenure-holder himself occupying a portion of the land.

(3) Under Article 1 of Schedule I of the Act as explained above.

A. K. D.