

APPELLATE CIVIL.

Before Guha and Bartley JJ.

BEER BIKRAMKISHORE MANIKYA

v.

SONAMANI SHARMA.*

1933

Aug. 24, 25.

Landlord and Tenant—Ejectment—Rent due for period other than year preceding suit, if may be taken into account—Landlord and Tenant Procedure Act (Beng. VIII of 1869), ss. 22, 27, 52.

For the purpose of a decree for ejectment, the non-payment of rents due for a period other than the year previous to the institution of the suit cannot be taken into account.

Jogeshuri Chowdhraïn v. Mahomed Ebrahim (1) relied on.

Savi v. Mohesh Chunder Bose (2) not followed.

SECOND APPEALS by the plaintiff.

The facts of the cases and the arguments advanced at the hearing of the appeals appear sufficiently in the judgment.

Rameshchandra Sen and Nripendrachandra Das for *Beerendrachandra Das* for the appellant.

Priyanath Datta for the respondents.

Cur. adv. vult.

GUHA AND BARTLEY JJ. These are appeals by the plaintiff in suits for ejectment on the ground that the defendants had not satisfied the previous decrees for rent for the period from 1332 to 1334 B.S., and also on the ground that rent for year 1336 B.S. had not been paid. It appears that the plaintiff in the suits

*Appeals from Appellate Decrees, Nos. 1895 to 1900 of 1931, against the decrees of Naranath Mukherji, Fourth Additional Subordinate Judge of Sylhet, dated Feb. 24, 1931, affirming the decrees of Sudhirchandra Datta, First Munsif of Moulvibazar, dated June 20, 1930.

(1) (1886) I. L. R. 14 Calc. 33.

(2) [1864] W. R. Gap Vol. (Act X Rulings) 29.

1933

*Beer Bikram-
kishore
Manikya
v.
Sonamani
Sharma.*

obtained decrees for rent against the defendants for the years 1332 to 1335 B.S., and in the decrees passed in favour of the plaintiff it was mentioned that the defendants could avoid ejection, if they paid the plaintiff his dues for 1335 B.S. within the time mentioned in the decrees. The dues for the year 1335 B.S. were paid up within the time specified, but there was subsequent non-payment of rent by the defendants in the year 1336 B.S., and the dues on account of the years 1332 to 1334 were also not paid. In the suits, out of which these appeals have arisen, the plaintiff prayed for eviction of the defendants on account of non-payment of rent for the year 1336 as also for non-satisfaction of the previous decree, so far as they related to arrears of rent for the years 1332 to 1334. The courts below have agreed in passing decrees for ejection in favour of the plaintiff in the manner following :

The defendants are called upon to pay into court the rent for 1336, as claimed, with damages and costs, within one month; failing which the defendants will be evicted from the rent lands. The plaintiff's prayer for ejection on account of unsatisfied portions of the previous decrees is disallowed.

The plaintiff has appealed to this Court; and it was urged, in support of the appeals, that the unexecuted portions of the decrees for the years 1332 to 1334 should have been included in the amount, for the non-payment of which the tenant-defendants could be ejected.

The decision of the question raised in the appeals depends upon the construction of the sections 22, 27 and 52 of Bengal Act VIII of 1869. It is to be mentioned at the outset that section 52 gives the landlord a right to bring a suit for ejection and for arrears of rent in the same action; and the section enables the landlord to adduce any unexecuted decree for arrears of rent, as evidence of the existence of such arrear in a suit for ejection. The section (52), therefore, lays down the procedure, by which the

landlord's right under section 22 of the Act of ejecting a tenant is to be enforced. As indicated clearly in sections 22 and 27 the claim for rent, for the non-satisfaction of which the liability to be evicted is incurred under the law, must be on account of the arrear of rent remaining due from the tenant at the end of the Bengali year. The tenant, as mentioned in section 22,

shall be liable to be ejected from the land in respect of which the arrear is due.

The arrear, referred to in section 22, is the arrear to which reference has been made in the previous part of the section: "arrear of rent remaining due at the end of the Bengali year." The effect of the provisions, contained in the sections 22, 27 and 52 of Act VIII of 1869, is that the right is given to the landlord to eject a tenant, if any arrears are due at the end of the year, *i.e.*, for non-payment of rent for that year. The forfeiture or determination of the tenancy takes place by the operation of section 22, when the tenant makes default in the matter of payment of rent due at the end of the year. In laying down the procedure for an action for recovery of arrears of rent and for ejectment of a tenant—the mode of enforcing his rights by the landlord—mention is made of an unexecuted decree for arrear of rent. The provision thus made in section 52 in the matter of production of evidence before the court does not affect the substantive provisions contained in section 22 of Act VIII of 1869, laying down the liability of a tenant to be ejected for arrear of rent due. The arrear to be taken into account has been definitely mentioned in the section itself; and arrears, other than the arrear remaining due at the end of the year, cannot be taken into account for the purpose of a decree for ejectment as contemplated by section 22, which is the only provision in the enactment, under which the landlord can exercise his right to eject a tenant on the ground of non-payment of rent. The forfeiture or the

1933

Beer Bikram.
kishore
Manikya
V. *Shri*
Sonamani
Sharma.

1933

*Beer Bikram-
kishore
Manikya*
v.
*Sonamani
Sharma.*

determination of the tenancy takes place when the tenant makes default at the end of the year, and dues on account of rent for previous arrears have not to be taken into account for the purpose of passing a decree for ejectment. As provided by section 52 the landlord may combine a claim for ejectment, with a claim for realization of arrears of rent. There may be a decree for arrears for any period in respect of which the claim is not barred under the law; but so far as the decree for ejectment is concerned, the non-payment of dues on account of rent for a period other than the year previous to the institution of the suit cannot under the law, as contained in sections 22 and 27 of Bengal Act VIII of 1869, be taken into account.

In view of the above conclusion arrived at by us, the decision of the courts below, that the arrears of rent due from the tenants for the years 1332 to 1334 could not be included in the amounts, for non-payment of which the tenant-defendants were to be ejected, is in our judgment correct and must be upheld.

It may be mentioned that the conclusion we have arrived at bearing upon the interpretation of sections 22 and 52 of Act VIII of 1869 is in consonance with the view indicated in the judgment of this Court in the case of *Jogeshuri Chowdhraim v. Mahomed Ebrahim* (1). Reliance was placed on behalf of the appellant on the decision of this Court in the case of *Savi v. Mohesh Chunder Bose* (2), for the proposition that the amount of arrear shall be specified in the decree passed by the court on the non-payment of which eviction was to follow. The facts of the case, in which the aforesaid decision was given, do not appear from the report; and we are unable to hold that the learned judges deciding the case meant to lay down anything, which was not provided for by the law. As indicated above, sections 22 and 27 of Bengal Act VIII of 1869 provide for ejectment for non-payment of arrears of

(1) (1886) I. L. R. 14 Calc. 33.

(2) [1864] W. R. Gap Vol.
(Act X Rulings) 29.

rent due on account of the year preceding the institution of the suit, and we do not find anything in the decision referred to above, which could enable us to overlook or disregard the provision of the law bearing upon the subject under consideration.

In the result, the appeals are dismissed; the decisions arrived at by the courts below and the decrees passed by them are affirmed.

There is no order as to costs in these appeals.

Appeals dismissed.

G. S.

1933

Beer Bikram-
† kishore
Manikya
v.
Sonamani
Sharma.