

## APPELLATE CIVIL.

Before Mallik J.

1933

Aug. 9, 10.

DWARKANATH DAS SARKAR

v.

PRASANNAKUMAR DE.\*

*Landlord and Tenant—Application to determine incidents of tenancy—Jurisdiction of court to decide question of relationship of landlord and tenant between parties—Bengal Tenancy Act (VIII of 1885), s. 158.*

In a proceeding under section 158 of the Bengal Tenancy Act to determine incidents of tenancy, started at the instance of the landlord, the court has jurisdiction to decide a dispute as to the existence of the relationship of landlord and tenant between the parties.

*Debendro Kumar Bundopadhyā v. Bhupendro Narain Dutt* (1) distinguished.

*Kuilash Chandra Gantail v. Mcheruddin Sheikh* (2) followed.

*Peary Mohun Mukerji v. Ali Sheikh* (3) not followed.

The facts of the case are as follows:—

In the record-of-rights certain lands were recorded as appertaining to a *tāluk* owned by Prasannakumar De in *khwāts* 349 and 350 respectively. The *jamā* of the lands under *khwāt* 349 was recorded at 8 annas, but no rent was recorded under the other *khwāt* 350. Prasannakumar, therefore, preferred an application under section 158 of the Bengal Tenancy Act to have the rent fixed on that figure in respect of this *khwāt* also. Dwarkanath Das Sarkar, who was in possession of the land as a *rāiyat*, opposed the application on the ground that he held the land directly under Prasannakumar's superior landlord and not under Prasanna himself and that the application was not maintainable under section 158 of the Bengal Tenancy Act.

\*Appeal from Appellate Decree, No. 1022 of 1931, against the decree of T. H. Ellis, District Judge of Bakarganj, dated Dec. 18, 1930, confirming the decree of Mahammad Akkas Ali Khan, Third Munsif of Pirojpur, dated June 30, 1930.

(1) (1891) I. L. R. 19 Calc. 182. (2) (1926) 97 Ind. Cas. 604.

(3) (1892) I. L. R. 20 Calc. 249.

The Munsif held that Prasannakumar's application was maintainable and allowed it with costs, and the order was upheld by the District Judge on appeal.

The opposite party, thereupon, appealed to the High Court.

*Surajitchandra Lahiri* and *Shaileshchandra Talukdar* for the appellant.

*Jitendranath Ray* and *Debendranath Bhattacharjya* for the respondent.

*Cur. adv. vult.*

MALLIK J. The only point that arises for consideration in this appeal is whether, in a proceeding under section 158 of the Bengal Tenancy Act, started at the instance of the landlord, the court has any jurisdiction to decide a dispute as to the existence of the relationship of landlord and tenant between the parties. On behalf of the appellant, the decision in *Peary Mohun Mukerji v. Ali Sheikh* (1) was relied upon. But, in a later decision of this Court, in the case of *Kailash Chandra Gantail v. Meheruddi Sheikh* (2), it was held that, in an application under section 158 of the Bengal Tenancy Act, it is open to the court to determine whether the relationship of landlord and tenant does exist between the parties. Mr. Lahiri for the appellant would have me follow the decision in the I.L.R. 20 Cal. case (1), contending that this decision is supported by some observations in the Full Bench decision in *Debendro Kumar Bundopadhyia v. Bhupendro Narain Dutt* (3). That case appears to me to be clearly distinguishable. In that case, the landlords' application under section 158 of the Bengal Tenancy Act was rejected, among others, on the ground that the petitioners' own assertion was that no tenancy, in fact, existed between

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themselves and the opposite party at the date of the petition and, therefore, as on the petitioners' own showing no tenancy existed, it would be absurd to ask the court to determine the incidents of a tenancy. The 20 Calcutta case (1) gives some support, no doubt, to the contention raised on behalf of the appellant. But the decision of the learned Judges in the 20 Calcutta case (1) would show that the question of relationship of landlord and tenant can sometimes be gone into—gone into collaterally—in a proceeding under section 158 of the Bengal Tenancy Act. In the 97 Indian Cases case (2), which was a decision much later than the decision in I.L.R. 20 Calcutta (1), the 20 Calcutta case (1) was referred to and the Hon'ble Judges in this 97 Indian Cases case (2), in view of the wording of section 158, sub-section 1(b), came to the conclusion that a court, in a proceeding under section 158, had jurisdiction to determine the question whether the relationship of landlord and tenant existed between the parties. Having regard, therefore, to the wording of section 158, as it is to be found in sub-section (1), clause (b), I am inclined to follow the decision of this Court in 97 Indian Cases (2) in preference to the decision in 20 Calcutta (1) and I would, accordingly, dismiss the appeal with costs.

*Appeal dismissed.*

A. A.

(1) (1892) I. L. R. 20 Calc. 249.

(2) (1926) 97 Ind. Cas. 604.