

APPELLATE CIVIL.

Before Nasim Ali J.

KASHINATH MUKHERJI

v.

PABANCHANDRA MANNA.*

1934

Nov. 29.

Under-rāiyat—Relief against ejectment—Bengal Tenancy Act (VIII of 1885), s. 48C, cl.(a) and s. 66, cl.(2).

The language used in section 66 of the Bengal Tenancy Act is very wide. The word used there is "tenant." Even if the proviso to section 48C, clause (a), is not attracted in the case of an under-rāiyat, he can nevertheless claim, under section 66, clause (2), the benefit of relief against ejectment by depositing the arrears of rent in court. Section 66 does not contemplate suits for ejectment only, but includes suits for recovery of arrears of rent as well as for ejectment.

SECOND APPEAL by the plaintiff.

The facts of the case and the arguments in the appeal appear sufficiently in the judgment.

Haricharan Shastri and *Manilal Bhattacharyya* for the appellants.

Kshiteeshchandra Chakrabarti and *Panchanan Ghoshal* for the respondents.

NASIM ALI J. The appellants are the plaintiffs in a suit for ejectment under section 48C, clause (a) of the Bengal Tenancy Act, as also for recovery of the price of *bhāg* produce for the years 1332 to 1335 B. S., with damages thereon. The courts below have decreed the plaintiffs' claim for rent for the year 1335 B. S., at Rs. 40 *per annum* with damages thereon at 25 *per cent*. They agreed in dismissing the plaintiffs' claim for ejectment. Hence the present appeal by the plaintiffs.

The only point urged in support of the appeal is that, in view of the terms of the *kabuliyat*, the

*Appeal from Appellate Decree, No. 1116 of 1932, against the decree of Rajendralal Chakrabarti, Additional Subordinate Judge of Hooghly, dated Feb. 16, 1932, affirming the decree of Dhirendranath Bagchi, Third Munsif of Howrah, dated Dec. 19, 1929.

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defendants are not entitled to get the benefit of the proviso to section 48C, clause (a). Assuming that this contention is correct, still the plaintiff cannot succeed in the present appeal.

The facts in this case are not disputed. The defendants hold the under-*rāiyati* on the basis of a registered *kabuliyat* dated 1306 B. S. From the terms of the *kabuliyat*, it is clear that the tenant has got the option of paying this rent either in money or in kind. The courts below, on a construction of the *kabuliyat*, have come to the conclusion that the under-*rāiyats* are protected by the proviso to section 48C, clause (a), Bengal Tenancy Act, and have given the benefit of section 66 to them.

Now section 48C, clause (a) is in these terms :—

An under-*rāiyat* shall, *subject to the provisions of this Act*, be liable to ejection on one or more of the following grounds, and not otherwise, namely :—

(a) on the ground that he has failed to pay an arrear of rent :

Provided that, if the under-*rāiyat* is one whose rent is payable in terms of cash and not of produce and he pays through the court all arrears up to date together with such interest and damages as the court may award, he shall not be liable to ejection on account of such arrears.

This section, therefore, is controlled by the other provisions of the Act. Section 66 of the Act runs as follows :—

(1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a *rāiyat* holding at fixed rates or an occupancy-*rāiyat*, at the end of the agricultural year (Bengali year), the landlord may, whether he has obtained a decree for the recovery of the arrears or not and whether he is entitled by the terms of any contract to eject the tenants for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejection for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suits are paid into court within thirty days from the date of the decree, or when the court is closed on the thirtieth day on the day upon which the court re-opens.

(3) The court may for special reasons extend the period of thirty days mentioned in this section.

The language in section 66 is very wide. The word used there is "tenant" and it is not disputed in this case that the under-*rāiyats* in the present case are tenants and that they are not mere *bhāgidars* or *ādhidars* or *bargādars*. If the proviso to section 48C,

clause (a) is not attracted to this case, the under-*râiyat* can claim the benefit under section 66, clause (2). The learned advocate for the appellant did not seriously dispute this position, but he argued that section 66 contemplated cases for ejection only and that the present suit, being a suit for recovery of arrears of rent as also for ejection, the provisions of section 66 could not be attracted to this case. But if this contention be correct, the present suit is not within the purview of section 48C also. This argument, therefore, is of no assistance to the plaintiff. The courts below were, therefore, right in giving the under-*râiyat* the benefit of section 66.

In view of the above conclusions, it is not necessary to express any definite opinion as to whether, in view of the terms of the *kabuliyat*, the under-*râiyat*, in the present case, can claim the benefit of the proviso to section 48, clause (a). The proviso speaks of an under-*râiyat*, whose rent is payable in terms of cash and *not in terms of produce*. It is, therefore, contended by the learned advocate for the appellant that, where the tenant has got the option to pay the rent either in money or in kind, he cannot claim the benefit of the proviso. In other words the argument is that the proviso contemplates cases where the rent is payable *only* in cash and not cases where the *râiyat* has got the option to pay either in cash or in kind. There is some force in this contention. But as the under-*râiyats* in the present case are entitled to the benefit of the provisions of section 66, it is not necessary, for the purposes of this case, to pursue the point any further. In any view of the case, the plaintiffs are not entitled to eject the defendants, as it is admitted that the arrears have been all paid up.

The appeal, therefore, fails but, in the circumstances of the case, I make no order as to costs.

Leave to appeal under section 15 of the Letters Patent has been asked for and is refused.

Appeal dismissed.