

CIVIL REVISION.

Before M. C. Ghose J.

SUNITY BALA DAS GUPTA

v.

PRODYOT KUMAR TAGORE.*

1938

May 31.
June 1.

Jurisdiction—Application for realisation of landlord's fee, where to be brought—Suit, if necessary for such purpose—Bengal Tenancy Act (VIII of 1885), ss. 26J (2), 144, 188.

The whole of s. 144 of the Bengal Tenancy Act refers to the territorial jurisdiction of the Courts; as to the pecuniary jurisdiction of the Courts, this section must be read together with the relevant sections of the Code of Civil Procedure under which a suit is to be instituted in the Court of the lowest grade competent to try it. Consequently, a Munsif has jurisdiction to entertain an application under s. 26J when the amount claimed is within his pecuniary jurisdiction and he has also territorial jurisdiction under s. 144 of the Act although the market value of the lands of the holdings would take the case out of the pecuniary jurisdiction of the Munsif.

Fazlur Rahim Abu Ahmed v. Dwarka Nath Chowdhry (1) followed.

An application under s. 26J (2) is the proper remedy for the realisation of such fees and the landlord is not bound to institute a suit for that purpose.

Aghorechandra Jaha v. Rajnandinee Debee (2) followed.

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The material facts of the case and the arguments in the Rule appear sufficiently from the judgment.

Rishindra Nath Sarkar, Nripendra Chandra Das and Gunendra Krishna Ghose for the petitioners.

Gopendra Nath Das and Satindranath Chatterji, with them *Chandra Sekhar Sen*, for the opposite party.

M. C. GHOSE J. These are two petitions under s. 115 by the transferees in proceedings under s. 26J

*Civil Revision, Nos. 1315 and 1316 of 1937, against the order of Gobardhan Kumar, First Munsif of Alipore, dated July 28, 1937.

(1) (1903) I. L. R. 30 Cal. 453. (2) (1932) I. L. R. 60 Cal. 289.

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of the Bengal Tenancy Act. The two sets of petitioners each purchased certain lands from the previous holders thereof on the footing that the lands were held under *mokarari mourasi* rights at a rate of rent fixed for ever and on that basis the transfer fee under s. 12 was sent to the landlord. The landlord thereupon applied to the Court under s. 26J for landlord's fee at 20 per cent. on the basis that in the transfer-deeds the lands had been wrongly described as held at a rent fixed for ever, while really they were ordinary *rāiyati* holdings. After the application was made, the transferees instituted a suit in the Court for a declaration that the lands which they had purchased were really lands at a fixed rate of rent and not merely *rāiyati* holdings. The landlord defended the suit and it was fought up to the High Court and decided against the petitioners. The application which was kept pending at the prayer of the petitioners during all this time was taken up after the judgment of the High Court and the learned Munsif by his order dated July 28, 1937, held that the landlord was entitled to recover landlord's fee at 20 per cent. and on the ground that the landlord's fee had been withheld for four years by the suits, which the petitioners had made, the Court allowed compensation equal to the amount of landlord's fees.

Against that order it is urged in the first place that the learned Munsif had no jurisdiction to try the matter. Reference is made to s. 144(3), which lays down that when a Court is authorised to make an order on the application of a landlord the application shall be made to the Court which has jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought. It is urged that the market-value of the lands of the holdings would take the case out of the jurisdiction of the Munsif, and, therefore, the learned Munsif had no jurisdiction to hear the applications though the applications are in respect of sums of money which are within the jurisdiction

of the Munsif. This argument appears to be untenable having regard to the observations made in the case of *Fazlur Rahim Abu Ahmed v. Dwarka Nath Chowdhry* (1). The whole of s. 144 seems to refer to the territorial jurisdiction of the Courts; as to the pecuniary jurisdiction of the Court, this section must be read together with the relevant sections of the Code of Civil Procedure. Under that Code, a suit is to be instituted in the Court of the lowest grade competent to try it. Here the matter in dispute was as to the claim of a certain sum of money. The learned Munsif has territorial jurisdiction under s. 144 of the Bengal Tenancy Act to try the matter. As for his pecuniary jurisdiction, the sums claimed were within his jurisdiction.

The next point urged is that under s. 26J (2) the landlord ought to have filed a suit and that an application was not the proper remedy. The learned advocate argues it on the construction of the sub-section which says that the landlord shall be entitled to recover the balance of the landlord's transfer-fee, *etc.* It is urged that the sub-section does not allow the party to make an application as is done in certain other sections, such as 26F, but leaves the remedy to be taken by the landlord and the only remedy of the landlord is, therefore, by the institution of a suit. If there was nothing else in the Act on this matter this argument would be correct and an application would not be the proper remedy under s. 26J (2), but a suit would have to be instituted. Under s. 188, however, which relates to action to be taken collectively by co-sharer landlords, it is stated that the landlord may file an application under s. 26J. Having regard to this remark in s. 188 it was held in the case of *Aghorechandra Jalui v. Rajnandinee Debee* (2) that an application was a proper remedy under s. 26J (2) of the Bengal Tenancy Act. In these circumstances it cannot be held that the learned Munsif acted wrongly in entertaining the application. Further, it is to be noted that the petitioners

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did not at the earliest opportunity object in the Court of the Munsif that a suit was the proper remedy and an application did not lie, on the contrary they had the application stayed by an injunction while they instituted a separate suit for a declaration that the lands were held at a fixed rate of rent.

Lastly, it was urged that the learned Munsif exercised his discretion wrongly in allowing the landlord compensation equal to the amount of the transfer-fee, namely, Rs. 71 in one case and Rs. 242 in the other case. It is true that the matter was delayed four years by the suit brought by the transferees for declaration of their status but it cannot be said that the suit was a frivolous suit and they cannot be blamed for coming to the Court for adjudication of their rights. The compensation is reduced to 10 per cent. of the transfer-fee in each case. With this modification the Rules are discharged. There will be no costs in this Court.

Rules discharged.

A. C. R. C.