Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

1881
May 3.

PUNNOO SINGH AND OTHERS (PLAINTIFFS) *v.* NIRGHIN SINGH AND OTHERS (DEFENDANTS).*

Arrears of Rent—Rate of Rent payable—Duty of Court—Beng. Act VIII of 1869.

The plaintiff sued for arrears of rent for the year 1282 at the rate of Rs. 2-8 per bigha. The defendant alleged that the rent was only fifteen annas per bigha. The Judge found that the plaintiff had not proved that the rate of rent was Rs. 2-8 per bigha, and, without finding that the proper rate was fifteen annas, gave the plaintiff a decree for that amount. The plaintiff brought a subsequent suit for arrears of rent for the year 1283, when it was held by the Court of first instance and by the lower Appellate Court, that he could only recover arrears of rent at the rate of fifteen annas, that being the rate of "rent payable for the previous year" within the meaning of s. 14, Beng. Act VIII of 1869.

Held, that the decisions were wrong, and must be reversed.

In a suit for arrears of rent, where the plaintiff fails to prove the rate of rent claimed in the plaint, it is the duty of the Court to find the proper rate of rent payable by the tenant to his landlord, and not to give a decree merely for the rent admitted by the tenant.

THIS case with nine others were suits instituted by the plaintiffs for arrears of rent for the years 1283, 1284, and 1285 (1876, 1877, 1878). The facts are set out in the judgment of the Court of first instance, the material portion of which is as follows:—

"The admitted facts of the case are these: That the plaintiffs brought thirty-five rent-suits for the years 1281 and 1882 F. S. (1874-1875) against the non-resident cultivators of the village Futtehpore Kandhra; that Baboo Gokul Chand, my predecessor, disbelieved the evidence adduced by the plaintiffs to prove their alleged settlement of rent at the rate of Rs. 2-8 per bigha, and decreed the claim at the defendants' admitted jama; that the plaintiffs appealed from his decision to the Judge, who confirmed the decrees passed by this Court; that they then appealed to

* Appeals from Appellate Decrees, Nos. 2357 to 2366 of 1879, against the decree of J. F. Browne, Esq., Judge of Patna, dated the 28th of August 1879, affirming the decree of Baboo Chutterdhur Pershad, Second Munsif of Patna, dated the 28th of March 1879.

the High Court, which remanded five of the thirty-five cases for retrial, and refused to hear appeals in the remaining thirty cases, because the amount was below Rs. 100 in each of those cases; that the District Appellate Court, on the 2nd of September 1878, passed a decree at the rate of Rs. 2 per bigha in the five remanded cases, on the ground that the rate of rent was Rs. 2 previous to the year 1280, and that the Court refused to hear reviews in the remaining thirty cases.

"The plaintiffs have brought these ten cases at the rate of Rs. 2 per bigha, at which they obtained decrees against the five tenants on remand. They have produced the same papers upon which the Judge acted in awarding decrees at the rate of Rs 2 per bigha in the remanded cases. They have proved them. There can be no doubt that the defendants alleged a very low rate of their holdings, and have not proved them to the satisfaction of the Court. But the question is, whether plaintiffs can claim rent at a higher rate than what was awarded for the years 1281 and 1282. It is admitted that no fresh settlement was made for the succeeding years; that no written contract has been taken from the defendants; and that no notice of enhancement has been served on them. In my opinion the plaintiffs, after having failed to succeed in their claim for the arrears of rent of the years immediately preceding at a certain jama, cannot turn round and come to Court on a different allegation. The previous decrees, whether right or wrong, are final. No doubt, in those cases the proper course would have been as directed by the High Court, and adopted by the Judge, in the five remanded cases, to find the actual rate of rent paid independent of the alleged settlement of plaintiffs, and of the rates stated by defendants when their respective allegations seemed incorrect; but I have my doubts whether the same course should be adopted in the present cases after the decrees for the defendants' admitted jama were passed for the years 1281 and 1282. Supposing that the rate of rent was Rs. 2 per bigha for 1280, that state of things did not continue in 1281 and 1282, by the happening of an event, namely, the passing of decrees which were passed by a competent Court and are final between the parties. It has been argued that those decrees are

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binding on the plaintiffs only for the years 1281 and 1282. But to pass a decree in plaintiffs' favor at a higher rate would be to act contrary to s. 14 of the Rent Law, which expressly provides that a tenant shall not be liable to pay a higher rent than what he has paid in the year immediately preceding, unless he is duly served with a notice of enhancement. Under all these circumstances, I am of opinion that the plaintiffs cannot recover rent at a higher jama than what is admitted by the defendants and what was decreed for the years 1281 and 1282."

On appeal, the Judge of the lower Appellate Court said:—"In the opinion of this Court the view taken by the Munsif is quite correct. The plaintiffs could not possibly have obtained, and do not say they did obtain, a greater amount of rent than was actually decreed. This being so, that amount and no other was, in the terms of s. 14 of Beng. Act VIII of 1869, the rent payable for the previous year, and the plaintiffs cannot sue for more rent except after notice of enhancement or on the strength of a new agreement." The plaintiffs appealed to the High Court.

Baboo *Mohesh Chunder Chowdhry* and Baboo *Chunder Madhub Ghose* for the appellants.

No one appeared for the respondents.

The judgment of the Court (GARTH, C. J., and MCDONELL, J.) was delivered by

GARTH, C. J.—This suit is brought against the defendants for the rent of a jote for the years 1283, 1284, and 1285, the plaintiffs claiming at the rate of Rs. 2 per bigha.

They say in their plaint that they are, properly speaking, entitled to rent at the rate of Rs. 2-8 per bigha, but that the recovery of such higher rent depends "upon the adoption of other steps," by which we understand them to mean, that to recover the higher rent they must bring a suit for enhancement.

The answer of the defendants is this, that the plaintiffs brought a previous suit against them for the years 1281 and 1282, in which they claimed rent for the same jote at the rate of Rs. 2-8 per bigha; that their answer to that suit was, as it is now, that their proper rent was fifteen annas per bigha; and that in that suit, as the plaintiffs failed to prove the rate of Rs. 2-8

which they claimed, a decree was given in their favor for the sum which the defendants admitted,—namely, at the rate of fifteen annas. The defendants say, therefore, that as fifteen annas was adjudged by the Court to be, as between them and the plaintiffs, the proper rate of rent for the years 1281 and 1282, and as nothing has occurred since to alter that rate, the plaintiffs cannot recover the rent which they claim in this suit,—namely, at the rate of Rs. 2.

Both the lower Courts have adopted the defendants' view of the matter. They say, that, in the former suit, the rent was recovered by the plaintiffs at the rate of fifteen annas per bigha for the years 1281 and 1282, and that the plaintiffs cannot recover more without bringing a suit for enhancement.

Now, for the purpose of understanding rightly the effect of the judgment which was given in the former suit, we think it necessary to refer to the proceedings, not only in that suit, but in five other suits which were brought at the same time against other tenants by the same plaintiffs, and in which the latter claimed rent for the years 1281 and 1282 at the rate of Rs. 2-8 per bigha.

In all these suits the defendants alleged that the proper rate of rent was fifteen annas. The Munsif found that the plaintiffs had failed to prove the rate which they claimed; and that the fifteen annas alleged by the defendants respectively was the proper rent. So in each case he gave the plaintiffs a decree accordingly.

Appeals were then preferred in each of the cases to the District Judge, who affirmed the decision of the Munsif, but in a very equivocal form; and it is upon the language and meaning of his judgment that the question which we have now to decide in this case depends.

After considering the question, whether the plaintiffs had proved their case, and whether the proper rate of rent was Rs. 2-8, he found that Rs. 2-8 was not the proper rate. He apparently made no enquiry, and arrived at no decision as to whether the rate alleged by the defendants was the proper one; indeed, he states, that "the defendants' case is very likely to be false." But he nevertheless confirmed the decree of the

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Munsif, giving the plaintiffs in each case a decree at the rate admitted by the defendants.

He then goes on to say, "at the request of the plaintiffs' pleader, I record the fact, that I do not find as a fact that rent has hitherto been paid at the rate alleged by defendants. I merely find that it has not been paid at the rate alleged by plaintiffs."

That being the judgment of the District Judge in all the cases before him, five of those cases came up on appeal to the High Court. The case against the present defendants could not be so appealed, because the value of the suit was not sufficient to admit of it. But we desire to refer to the judgment of the Division Bench of this Court in the cases which were appealed, because that judgment puts a construction upon the judgment of the District Judge, with which we entirely agree.

The learned Judges of this Court (Jackson and White, JJ.) delivered judgment in one of the appeals only (No. 141 of 1877), and the effect of their judgment was, that the District Judge had come to no decision at all as to what the proper rent was.

Mr. Justice Jackson, after stating what was the contention of the plaintiffs in second appeal,—namely, that the District Judge had not found any rate of rent to be the proper one, and that he was bound to decide that question, goes on to say:—"The Courts are bound to ascertain, as closely as they can, what the real controversy between the landlord and the ryot is. On this account, I think the lower Appellate Court ought to have ascertained what rate of rent was payable to the plaintiffs, if the rate of Rs. 2-8 was not payable; and as that Court has intimated something more than a doubt, whether the defendants had made a true statement of their case, I think the case must go back to the Court below, in order to a further trial of that question."

The High Court remanded the case, in order that the District Judge might find, what he had not found when the case was before him, what was the proper rent payable by the defendants; and it appears that, on the remand, the then District Judge found that Rs. 2 was the proper rent payable by the defendants

for the years 1281 and 1282. That being the result of the suits which were appealed to the High Court, we have now to see, how far the parties to this present suit are affected by the judgment of the District Judge in the suit between the plaintiffs and the present defendants, which was not appealed to the High Court. Is that judgment binding upon the parties to this suit, as having determined what was the proper rate of rent for the years 1281 and 1282?

We entirely agree with the learned Judges of this Court, that the judgment of the District Judge in the former suits determined nothing of the kind. His judgment is so far binding between the parties as regards the rent for the years 1281 and 1282, that the plaintiffs could bring no other suit against the defendants for the rent for those particular years. But as the District Judge professedly did not determine the question between the parties, what was the proper rent due by the defendants for those years, we think that his judgment in no way estops the plaintiffs in this suit from proving what the proper rate of rent was for the years 1283, 1284, and 1285.

It was one thing to adjudge that the plaintiffs should recover from the defendants as the rent for those years the sum which the defendants admitted to be due. It was another thing to adjudge that the sum so admitted by the defendants was the proper amount of rent.

We must, therefore, remand this case, and the analogous cases which depend upon it, to the Munsif's Court, for retrial. We observe that the Munsif appears in the Court below to have received in evidence the decrees which were made by the District Judge on remand in the other five cases against other defendants. It is clear that he has no right to do this. He is bound to try this and the analogous cases upon their own respective merits, and to ascertain what is the proper amount of rent in each case.

The costs of this appeal will abide the result; and the analogous cases will be governed in all respects by this decision.

Cases remanded.