

APPELLATE CIVIL.

Before Das and Adami, JJ.

BALKI LAL

v.

SURENDRA NATH RAY.*

Receiver—whether competent to sue for rent accrued due prior to his appointment—Chota Nagpur Tenancy Act, 1908 (Ben. Act VI of 1908), s. 177—rent suit—plea of payment to third person.

A Receiver is competent to maintain a suit for recovery of rent which accrued due prior to his appointment.

Gunpati Singh v. Mussammatt Sachi Ojha (1), not followed.

Where, in a suit for recovery of rent, the defendants pleaded that they had paid the rent to a third person, viz., the minor son of the previous proprietor, held, that the case did not fall within section 177 of the Chota Nagpur Tenancy Act, 1908, inasmuch as no claim to receive payment had been made by, or on behalf of a third person.

[See *Ghura Manjhi v. Probodh Ohundra Mozumdar*, (2), Ed.]

The facts of the case material to this report were as follows :—

In June, 1906, a mortgage decree was obtained against Lakhpat Nath Singh in respect of the Jagir Tenure Dehat Bagro. Some years later a sale-proclamation was issued. Lakhpat then died and the name of a relation, Burti Nath Singh, was substituted for his name. Subsequently a posthumous son was born to Lakhpat but his name was not brought on the record. In November, 1911, soon after the birth of the son, the sale in execution of the decree of 1906 was held, and in March, 1912, the auction-purchasers obtained possession. Notices were served on various tenants under section 51 of the Chota Nagpur Tenancy Act, 1908, directing them to pay their rent in future to the auction-purchasers. In 1913 the auction-purchasers instituted a rent suit which failed because they had omitted to register their names under section 11. They then registered their names and in 1914

*Appeal from Appellate Decree Nos. 315, 325, and 326 of 1920, from a decision of C. H. Beid, Esq., Judicial Commissioner of Hazaribagh, dated the 10th January, 1920, confirming a decision of Babu Charu Chandra Chattarji, Deputy Collector of Hazaribagh, dated the 13th September, 1915.

(1) (1917) Pat. 311, 43 Ind. Cas. 735.

(2) (1921) 6 Pat. L. J. 698.

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they brought a rent suit against various tenants. The latter pleaded that they had *bonâ fide* paid the rent to the representative of the minor son of Lakhpat. The suit was, however, decreed. The tenants appealed to the Judicial Commissioner who held that the execution sale of 1911 was a nullity because the minor son had not been brought on the record. He also held that the plea of payment was not true and, that if true, the payment was not *bonâ fide*. The auction-purchasers appealed to the High Court. They also instituted a suit for a declaration of their title and the court in that suit appointed a Receiver on the 26th April, 1916. On the 29th March, 1917, the High Court reversed the decision of the Judicial Commissioner and restored that of the Deputy Collector. On the 15th March, 1918, the Receiver instituted nine rent suits against various tenants for the rent of 1971 and 1972 and all the suits were tried together. The trial court decreed all the suits. The defendants in four of the suits, *viz.*, Suits Nos. 186, 287, 302, and 295 appealed to the Judicial Commissioner. The appeals were numbered respectively 47, 48, 49, and 50 of 1918. The appellants contended (*i*) that the Receiver was incompetent to sue for rent which accrued due prior to his appointment, and (*ii*) that payments had been made *bonâ fide* to the representative of the minor son of Lakhpat. As regards the first plea the appellate court held that the Receiver was competent to sue. As regards the second plea the appellate court held that as neither the minor nor any one on his behalf had been made a party, section 177 did not apply, and that the payment of rent, even if true, was not *bonâ fide*. The appeals were dismissed.

The defendants appealed to the High Court.

Rai Guru Saran Prasad, for the appellants.

Hasan Imam (with him *Jalghobind Prasad Sinha* and *Sivanandan Roy*), for the respondents.

DAS, J.—These appeals arise out of suits instituted by the respondent Surendra Nath Roy who was appointed a Receiver in a certain action before the learned Subordinate Judge.

Two questions arise in appeal, *first*, whether the Receiver was competent to sue in respect of rent which had accrued due prior to his appointment, and, *secondly*

whether the court below was bound to add a person as party defendant to these rent suits to whom it is alleged the tenants paid rent in good faith.

The action in which the Receiver was appointed was an action between the auction-purchaser and the infant son of the previous landlord whose estate was purchased by the auction-purchaser. It seems to me that the Receiver was the only person who could sue in respect of rent whether it accrued due prior to his appointment or subsequent to his appointment. If he was not the person who was entitled to bring these suits then there was no other person because the title of the auction-purchaser was disputed by the minor son of the previous landlord and the title of the minor son was itself disputed by the auction-purchaser. There are passages in Woodroffe's book on Receivers which clearly establishes the proposition on which the respondents rely. The learned Vakil relies upon *Ganpati Singh vs. Musst. Sachi Ojhain* (1). That was a case which was decided on its own facts and I am not prepared to take the view that that case must decide the dispute between the parties in this case.

The only other point is whether the learned Subordinate Judge was bound to make the minor son of the previous proprietor a party to the action. The defendants took the plea that they paid the rent in good faith to the previous landlord. The learned District Judge has come to the conclusion, first, that there was no evidence that the rent was paid, and, secondly, that if it was paid it was not paid in good faith. Section 177 of the Chota Nagpur Tenancy Act applies when a right is claimed by or on behalf of a third person. In this case it is not suggested that the right to receive payment was claimed by or on behalf of the third person. It is quite true that the tenants took the plea that this third person was entitled to receive the rent, but that does not bring into operation section 177 of the Chota Nagpur Tenancy Act. In my opinion the decision of the learned District Judge was right and must be affirmed. I would dismiss these appeals with costs.

ADAMI, J.—I agree.

Appeals dismissed.

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