

APPELLATE CIVIL.

Before Mr. Justice Sharfuddin and Mr. Justice Coxe.

UDOY CHANDRA KARJI.

v.

NRIPENDRA NARAYAN BHUP.*

1909
Jan. 13.

Bengal Tenancy Act (VIII of 1885) ss. 50, 106—Presumption as to amount of rent—Permanent tenure.

The plaintiff's predecessors held a tenure from long before the Permanent Settlement at a rental of Rs. 4-8-0. In 1884 the tenure was split up into two tenancies each bearing a rental of Rs. 2-4-0. In the Record of Rights of 1906 the tenure was described as not held at a fixed rent. The plaintiff brought a suit under s. 106 of the Bengal Tenancy Act claiming the tenure to be a permanent one, and the rent as fixed in perpetuity :—

Held, that the old tenure did not still exist in the shape of the two new tenancies, the land held by the tenure-holder being affected by the division, under clause (3) of section 50 of the Bengal Tenancy Act.

SECOND Appeal by Udoy Chandra Karji, the plaintiff.

The plaintiff was a tenure-holder in respect of a *jote* paying a rental of Rs. 2-4-0. In the record of rights, which was prepared in 1906, the tenure in question had been recorded by the Settlement Officer as not permanent and not held upon a fixed rent. Thereupon, the plaintiff brought a suit under section 106 of the Bengal Tenancy Act claiming the rent to be fixed in perpetuity and not liable to enhancement.

It appears, that the plaintiff's predecessors held the original tenure, since long before the Permanent Settlement, at a rental of Rs. 4-8-0 for the entire tenure. In 1884 the tenure was split up into two, each bearing a rent of Rs. 2-4-0.

The defendants contended that the rent was not fixed, nor was the tenure permanent.

The Settlement Officer having found that the plaintiff had held the tenure practically on an unaltered rental since the

* Appeal from Appellate Decree, No. 2364 of 1907, against the decree of Bernard V. Nicholl, Special Judge of Rungpur, dated June 18, 1907, reversing the decree of Sayed Ejhar Hussain, Settlement Officer of that District, dated Dec. 22, 1906.

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time of the Permanent Settlement, gave a decree to the plaintiff in the terms prayed for.

The defendants appealed. The learned Special Judge set aside the decree of the first Court and allowed the appeal, observing as follows :—

“The conclusion arrived at by the Settlement Officer was faulty, inasmuch as he found that the tenure held by the tenant at Rs. 2-4-0 was part of one which was held at the time of the Permanent Settlement at Rs. 4-8-0, it having been split up into two since that Settlement.

“Although the aggregate rental of the two tenures so created might not be more than the rental of the original tenure, yet the effect of the division was to create two tenures, that is to say, the tenure held by the plaintiff at Rs. 2-4-0 was a new tenure, which came into existence since the Permanent Settlement, and consequently its rent was variable. The Settlement Officer seemed to have overlooked that section 50, clause (3) of the Bengal Tenancy Act, applied only to the holding of a “raiyat” and not to that of a “tenure-holder.”

From this judgment the plaintiff appealed to the High Court.

Babu Hem Chandra Mitter, for the appellant. The facts proved shew that there was no change in the rent or the rate of rent ; for the sake of convenience the original tenure, which was held at Rs. 4-8-0, was divided into two parts bearing an equal *jama* of Rs. 2-4-0. The plaintiff tenure-holder would be entitled, therefore, to the benefit of the presumption under clause (2) of section 50 of the Bengal Tenancy Act. The following cases were referred to : *Soodha Mookhee Dasse* v. *Ramgutte* *Kurmokar* (1), *Sheikh Mongola* v. *Kumud Chunder Singh* (2), *Raj Kishore Mookerjee* v. *Hureehur Mookerjee* (3) and *Kasheenath Lushkur* v. *Bamasoonduree Debia* (4).

The Advocate-General (Hon'ble Mr. S. P. Sinha), (*Babu Basanta Kumar Bose*, *Babu Mukunda Nath Roy* and *Babu Atul Chandra Dutt* with him), for the respondents. The judgment of the Special Judge is quite sound. Section 50 of the Bengal Tenancy Act deals with the protection as against enhancement of rent. Any person claiming that protection must prove that he held the tenure at a rent never changed

(1) (1873) 20 W. R. 419.

(3) (1868) 10 W. R. 117.

(2) (1900) 5 C. W. N. 60,

(4) (1868) 10 W. R. 429.

from the time of the Permanent Settlement. When a tenure is split up since the original settlement, it becomes a new contract. In this case the settlement is split up into two, and it becomes two contracts in the place of one original contract. Formerly, one suit was necessary for realization of the arrears of rent, now two suits have to be brought for the same purpose since the splitting up of the rent. The tenure was divided into two in 1884, and hence the protection under section 50 of the Tenancy Act cannot be claimed in this case. Under clause (3) of section 50 of the Act a tenure-holder cannot claim that protection.

Babu Hem Chandra Mitter, in reply.

SHARFUDDIN AND COXE JJ. The plaintiff is the appellant. A record of rights having been prepared the plaintiff was recorded in it as a tenure-holder and his tenure as not held at a fixed rent. He then brought a suit under section 106 of the Bengal Tenancy Act before the Settlement Officer, who decreed the suit and held that the tenure of the plaintiff was very old, in fact, existing from a period of 150 years before 1894. On the defendant appealing to the Subordinate Judge, that learned Officer held that, inasmuch as the original tenure, of which the rent was 4 Rupees 8 annas, was split up into two tenancies in 1291 (1884), that old tenure ceased to exist and under the new contract instead of that old tenure there sprang up two new tenancies at the rental of Rs. 2-4-0 each. On that ground he held that the plaintiff was not entitled to claim that his tenure had existed from the time of the Permanent Settlement.

Our attention has been drawn to clause (2) of section 50 of the Bengal Tenancy Act by the learned pleader for the plaintiff appellant, and it has been contended that the presumption arises in favour of the plaintiff's contention, under that section. But we find that clause (3) of that section, which is a special protection for raiyats, provides that the operation of section 50 so far as it relates to lands held by a raiyat shall not be

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affected by the fact of the land having been separated from other land, which formed with it a single holding. The plaintiff's predecessors held under a contract with the landlord with regard to one tenure bearing a rental of Rs. 4-8-0, which in 1884 was split up into two tenancies each bearing a rent of Rs. 2-4-0. It is contended on behalf of the plaintiff that as a matter of fact there has been no change either in the rent or in the rate of rent. What has been done is that, for the sake of convenience, the old tenure has been divided into two bearing an equal *jama*. But as a matter of fact since 1884 there have been two tenancies, not under the contract under which the old tenure was held, but under a new contract between the landlord and the tenure-holder. These two tenancies are two distinct tenancies under a different contract, and for payment of arrears of rent separate suits have to be brought. It cannot be said that the old tenure still exists in the shape of these two new tenancies. The words "so far as it relates to land held by a raiyat" in section 50, sub-section (3) clearly imply that the operation of the section so far as it relates to land held by a tenure-holder, is affected by the separation of the land from other land, which formed with it a single tenure.

Under these circumstances, we think that the judgment of the Special Judge is unassailable. This appeal is accordingly dismissed with costs.

Appeal dismissed.

E. D. B.