APPELLATE CIVIL.

Before Mr. Justice Caspersz and Mr. Justice Coxe.

KARMA URAON

v.

BARAIK DEBI DAYAL SINGH.*

1908

Nov. 20.

Chota Nagpore Landlord and Tenant Procedure Act (Bengal Act I of 1879), as amended by Bengal Act V of 1903, ss. 44A. 62, 66, 67 and 77—Previous suit for rent, struck off under section 62—Whether subsequent suit within six months maintainable.

Held by Caspersz J. Section 62 of the Chota Nagpore Landlord and Tenant Procedure Act is not controlled by section 44A of the said Act. When a rent suit is dismissed under the first clause of section 77, read with section 62, of the Act, another suit for the same rent is maintainable within the period of six months.

Held by Coxe J., that such a suit is not maintainable by virtue of section 44A of the Act.

SECOND APPEALS by the defendants, Karma Uraon and others.

These appeals arose out of two rent suits brought by the plaintiff for recovery of arrears of rent against the defendants under the Chota Nagpore Landlord and Tenant Procedure Act. It appeared that the 18th of May 1906 was fixed for the hearing of the said suits for rent. On that day the plaintiff being absent, the Deputy Collector struck off the suits under s. 62 of the said Act. The plaintiff on the same day applied for the restoration of the suits, but the application was rejected. He then in June 1906 instituted fresh suits for rent.

Defence *inter alia* was that the suits could not proceed, inasmuch as they had been instituted within six months of the previous suits in contravention of the provisions of s. 44A of Bengal Act I of 1879.

The Court of first instance having held that the suits were barred by the provisions of section 44A of the Act, dismissed

*Appeals from Appellate Orders Nos. 228 and 238 of 1907, against the order of W. H. Vincent, Judicial Commissioner of Chota Nagpur, dated April 9, 1907, reversing the order of Moulvi Mahomed Hamid, Deputy Collector of Ranchi, dated Nov. 16, 1906.

1908

KARMA URAON v. BARAIK DEBI DAYAL SINGH.

the suits. On appeal the learned Judicial Commissioner reversed the decision of the first Court.

Against this decision the defendants appealed to the High Court.

CASPERSZ J.

Babu Jogesh Chandra Dey, for the appellant. The suits are barred by s. 44 A. which was added by the amending Act (V of 1903). Section 62 of the Act is controlled by s. 44 A. The words "shall not institute another suit . . . . recovery of any rent" in that section are wide enough to include cases falling under section 62. The order of the 18th May was really an order under the last part of section 77, as plaintiff admitted that he was present. The plaintiff should have pursued the remedies prescribed in sections 66 and 67, and by way of review. At any rate the suit for rent of 1962 could not be maintained.

Babu Nalini Ranjan Chatterjee, for the respondent. Section 44A does not apply to a case like the present. The suit was struck off. The parties are therefore restored to their original position. In any case section 62 controls section 44 A. It comes after section 44A, and the only bar imposed is the bar of limitation. Section 62 was left untouched; it was not made subject to the provisions of section 44A, when the latter section was added. The order "struck off" passed on the 18th of May was the correct order. The Court did not accept the plaintiff's statement that he was present.

Babu Jogesh Chandra Dey, in reply.

Cur. adv. vult.

CASPERSZ J. In these second appeals by the defendants the substantial question raised is whether the plaintiff's suits to recover arrears of rent for the Sambat years 1960, 1961, 1962 should have been dismissed as being in contravention of the provisions of section 44A of the Chota Nagpur Landlord and Tenant Procedure Act, 1879. Section 44A, which was added by Bengal Act V of 1903, runs thus:—"Where a landlord has instituted a suit, or applied for a certificate

under section 155 against a raiyat or a Mundari Khunt-kattidar for the recovery of any rent of his tenancy, the landlord shall not institute another suit or apply for another such certificate against him for the recovery of any rent of that tenancy until after six months from the date of the institution or making of the previous suit or application."

It appears that the plaintiff in March 1906 sued for the rents of 1959 to 1961, and alleged that some rent for 1962 had been deposited by the defendants. Issues were framed, and the 18th May 1906 was fixed for hearing. On that day the Deputy Collector recorded the order. "Plaintiff absent, struck off, section 62 C. N. T. A." The same day the plaintiff applied for restoration and asserted that he and the defendants had been present at the time of hearing, but the Deputy Collector declined to accede to the application. The plaintiff, then, in June 1906, without waiting for the expiration of the period of six months mentioned in section 44A, instituted the fresh suits giving rise to the present appeals. Thereupon, the Deputy Collector held the suits to be barred by the provisions of the section, but on appeal the Judicial Commissioner has held that the suits were not barred.

The contentions raised by the learned vakil for the appellant defendants are these :—

(1) That the second suits were barred by section 44A of the Act. (2) That the order of the 18th May 1906, under section 62, was in error, and that it was in reality an order under the second clause of section 77 (3) That the plaintiff should have pursued his other remedies under sections 66, 67 of the Act and by way of review. (4) That at any rate, the fresh suits for the arrears of 1962 were incompetent.

There is no substance in the second, third and fourth contention. The second clause of section 77 provides that—"If on any such day, one only of the parties appears, the issue may be tried and, determined in the absence of the other party, upon such proof as may be then before the Court." But no issue was tried and determined by the Deputy Collector on the 18th May 1906; the orders striking off the suits were appro-

1908

KARMA URAON v. BARAIK DEBI DAYAL SINGH.

priately passed under the first clause of section 77 read with section 62. Consequently, the only remedy open to the plaintiff was to proceed by way of fresh suits, and if those suits were maintainable, he could properly include in his claim all arrears of rent then accrued due.

CASPERSZ J.

The only substantial question, therefore, is that embodied in the first contention, and it is narrowed to this. Whether section 62 is controlled by section 44A. I think not.

Section 62 provides that, "If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be postponed prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case shall be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the provisions for the limitation of suits contained in this Act."

The plaintiff was at liberty, on the 18th May 1906, in terms of section 62, to bring fresh suits, unless precluded by the provisions for the limitation of suits contained in this Act. Those provisions are contained in sections 42, 45 and not, in my opinion, in section 44A. The period of limitation means the period during which action may be taken. Section 44A refers to a period during which action cannot be taken, and such a restrictive section is not covered by the general rule laid down by section 4 of the Limitation Act. In my opinion, section 44A restricts the Court's jurisdiction rather than the plaintiff's right of suit; the latter exists though it is in abeyance for six months.

Section 44A must also be construed strictly, that is, in favour of the plaintiff, because it encroached on his ordinary right to sue for arrears of rent. It may be assumed that the Legislature is acquainted with the actual state of the law. When Bengal Act V of 1903 added section 44A to Bengal Act I of 1879 the provisions of section 62 were left untouched. The Legislature did not insert, nor can I insert in section 44A the words "notwithstanding anything contained in section 62." The plain meaning of section 44A is that, when a land-

lord has instituted a suit for the recovery of any rent, he shall not institute another suit for the recovery of any rent subsequently accrued due until after six months from the date of the institution of the first suit. For example, if a tenant pays his annual rent in 12 or 4 instalments, the landlord cannot sue him every month or even every quarter; he must wait for at least six months. The words "any rent" which occur twice in section 44 A must be literally interpreted to refer, respectively, to any rent covered by the previous suit and any rent covered by the second suit and, *ex natura rei* the subject matter of the respective suits must be different, otherwise the second suit would not be necessary or maintainable. It is only in the case of a fresh suit, which the plaintiff is permitted by section 62 to bring, that the rent arrears claimed may be the same as in the suit struck off. The words "struck off" mean that the suit has, and never had, any existence; they imply that the suit is withdrawn as in section 373 of the Civil Procedure Code, and in this connection, may be cited the analogous section (147) of the Bengal Tenancy Act. See also *Varajlal Bhaishankar Selat* v. *Shomeshwar* (1).

The appeals must therefore fail and are dismissed with costs.

COXE J. The only question that arises in this case is whether, when a rent suit is dismissed under section 62, or the first clause of section 77 of Bengal Act I of 1879, another suit can be instituted for the same rent within the period of six months. It is conceded that, if the first suit is dismissed under any other section, the second suit will not lie.

I am inclined to agree that section 44A is not a provision for the limitation of suits "within the meaning of section 62." Of course, if the law requires a suit to be brought after one specified date and before another date, btoh dates are really limits of the period within which the suit may be instituted; and a provision of law, which fixes the first date, really limits

(1) (1904) I. L. R. 29 Bom. 219, 225.

1908

KARMA URAON v. BARAIK DEBI DAYAL SINGH.

COXE J.

the suit just as much as the provision that fixes the second date. But the word "limitation" has acquired by custom a technical meaning, and I have little doubt that the Legislative authorities in framing section 62 intended only to refer to the latest date by which a suit might be instituted.

But it appears to me that the terms of section 44A taken in their ordinary meaning bar this suit. The words are "when a landlord has instituted a suit for the recovery of *any* rent * * * he shall not institute another suit for the recovery of *any* rent." Here it cannot be denied that the plaintiff did institute a suit for rent in March 1906, and did institute another suit for rent in June 1906. It has been argued that the effect of striking off a suit under section 62 is to restore the parties to their original positions as if such a suit had never been instituted. But to me it seems impossible to say in such a case that the first suit has never been instituted at all. And that the second suit is a new suit and not a continuation of the first suit is clear from the provision of limitation.

An Act ought to be construed so as to give as far as possible their full meaning to all its provisions. Here, if section 44A is construed against the landlord, it does not really conflict with section 62. The landlord's right of suit established by section 62, is not abolished by being kept in abeyance or six months. On the other hand, if section 44A is construed against the tenant, it seems to me that so far as regards suits of this nature, the plain words of the section are over-ridden, as the landlord, having instituted a suit for rent, is again allowed to bring another suit for rent.

In this suit the landlord sues both for the rent claimed in the former suit and for the rent of subsequent years. Indeed he must do so on pain of losing the latter rent altogether, *Taruck Chunder Mookerjee* v. *Panchu Mohini Debya* (1). But, unless the effect of an order under section 62 is an entire obliteration of the suit altogether, which I do not consider

(1) (1881) I. L. R. 6 Calc. 791.

admissible, it would seem that the suit at any rate for the rent of the subsequent year must be barred by section 44A.

The learned Judicial Commissioner has laid some stress on the point that section 44A is intended to save tenants from being harassed, and that, if a case is struck off under section 62, the defendant cannot be said to be harassed at all. But this observation hardly applies to the first of the present cases, in which issues were framed and the defendant must therefore have been forced to attend at some time or other in the course of the proceedings.

Finally there is the analogy of section 147 of the Bengal Tenancy Act, 1885. That section (which deals with precisely the same matter as section 44A now under consideration) though made specifically subject to section 373 of the Civil Procedure Code is not made subject to section 99. The natural inference is that the Legislature did not intend suits revived under section 99 to be free from the restrict ons of section 147. And, if this was the intention of the Legislature in 1885, it would seem probable that the same intention would prevail when section 44A was enacted long afterwards to deal with an exactly similar matter.

Accordingly, I think that the suit is barred by section 44A, but as the landlord, from the point of view of justice and common sense, is certainly entitled to succeed, I do not desire to insist on the point of law, and I agree to the appeals being dismissed under section 575 of the Civil Procedure Code and not referred to another Judge.

Appeals dismissed.