CIVIL RULE.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice Coxe.

SHILABATI DEBI
v.
RODERIGUES.*

1908
Jan. 3.

Bengal Tenancy Act (VIII of 1885), s. 153—Landlord and tenant—Munsif with special power, decision of—Appeal—Suit—Value of Suit.

When a Munsif has once been specially empowered to exercise final jurisdiction under s. 153 (*b*) of the Bengal Tenancy Act:—

Held, first, that it is not necessary that the power should be conferred again on him on his transfer to another district; *second*, that no appeal lies from a decision of the Munsif, where the only question decided was, whether the relationship of landlord and tenant existed or not and the value of the suit did not exceed fifty rupees.

Held further that, where the original claim was more than fifty rupees, but it was reduced to below fifty on the case coming on for trial, the claim must be regarded as one for less than fifty rupees.

RULE granted to Srimati Shilabati Debi, defendant petitioners.

On the 17th April, 1906 the plaintiff, M. V. Roderigues, instituted a suit against the petitioner, Srimati Shilabati Debi, in the Court of the 1st Munsif at Hooghly, for the recovery of Rs. 117-6 for arrears of rent and damages and for increased rent for alteration of area. The petitioner denied the relationship of landlord and tenant. On the 17th December, 1906 the plaintiff withdrew his claim for increased rent and reduced his claim to Rs. 7-8 only. The Munsif dismissed the suit, holding that the relationship of landlord and tenant was not proved. The plaintiff thereupon appealed to the District Judge of Hooghly, who decreed the plaintiff's suit, holding that the question in the appeal involved a right to receive rent and that therefore an appeal lay to him.

The petitioner applied to the High Court under s. 622 of the Civil Procedure Code.

* Civil Rule No. 2383 of 1907.

1908

SHIBABATI DEBI v. RODERIGUES.

MACLEAN C.J.

Babu Manmatha Nath Mukherji for the petitioner. No appeal lay to anybody. The plaintiff, having abandoned his claim to a certain extent and reduced his claim to Rs. 7-8, cannot again fall back on the original value of the suit. On the question whether an appeal lay, see *Ram Mohan Mohish* v. *Badan Barai*(1); *Dena Bandhu Nandi* v. *Nobin Chundra Kur*(2).

Hon'ble Dr. Rash Behary Ghose for the opposite party. The plaintiff abandoned part of his claim with permission of the Court to bring a separate suit. It is not suggested that the original claim was a fraudulent one. See *Mahabir Singh* v. *Behari Lal*(3).

Supposing the suit, as originally filed, was dismissed, could there be no appeal? Then there is the question, whether the Munsif had jurisdiction to try the suit finally under s. 153 (*b*) of the Bengal Tenancy Act. When he was empowered with special powers under s. 153 (*b*), he was a Munsif at Baruipur and not at Hooghly. These powers once conferred do not absolutely vest in the Munsif. These powers rather follow a Munsif. [COXE J. You mean that he was not empowered afresh? That is never done.] There has been no injustice in this case, and under s. 622 of the Civil Procedure Code your Lordships may refuse to interfere.

MACLEAN C.J. This is an application under section 622 of the Code of Civil Procedure, in which a Rule has been granted, and the object of the Rule is to have the decree of the District Judge of Hooghly, dated the 10th of May, 1907, set aside on the ground that he had no jurisdiction to pass such a decree.

The suit was one for rent, and originally it was for a sum amounting to Rs. 117-6; but when the matter came on for trial in the Munsif's Court, the plaintiff put in a petition withdrawing his claim to certain increased rent on the ground of alteration of area and asking for leave to bring a fresh suit for that: and that application apparently was granted, the result of which was to reduce his claim in the present suit to one for rent amounting only to Rs. 7-8. The Munsif held that the

(1) (1903) 8 C. W. N. 436. (2) (1903) 8 C. W. N. 437.
(3) (1891) I. L. R. 13 All. 320.

relationship of landlord and tenant did not exist and dismissed the suit. Then there was an appeal to the District Judge: and the District Judge took the view, notwithstanding the objection of the defendant, that he could entertain the appeal, on the ground that the question in appeal involved a right to receive rent. The question really was whether the relationship of landlord and tenant existed, but the District Judge dealt with the case, as I have said, upon another footing, which I think is not well founded.

It is now urged before us that the District Judge had no jurisdiction to deal with the matter, having regard to the language of section 153 of the Bengal Tenancy Act. I think it is quite clear that the decree passed by the Munsif in this case did not "decide any question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant." It only decided the question of whether or not the relationship of landlord and tenant existed. *Primâ facie* no appeal would lie. No attempt has been made by the opposite party on this application to support the view of the District Judge, on the grounds stated by him. But two points have been taken: *First*, it is urged that the amount claimed in the suit exceeded Rs. 50. I have stated the facts. No doubt, the original claim was more than fifty rupees, but, when the suit came on for trial, the claim was reduced to Rs. 7-8. I think the consequence would be a little dangerous, if we were to accept the plaintiff's argument and say in the circumstances such as these that the claim exceeded fifty rupees.

Then, another point was taken, namely, whether the Munsif, who was a Munsif of Hooghly, when he tried this suit, was specially empowered by the Local Government to exercise final jurisdiction under section 153 of the Bengal Tenancy Act. What happened is this. On the 31st of July, 1896, this gentleman, who was then a Munsif of Baruipur, was specially empowered to exercise a final jurisdiction under section 153 (*b*) of the Bengal Tenancy Act; but, after that power had been conferred upon him, he was transferred to Hooghly. It is contended that he could

1908

SHILABATI DEBI v. ROLERI-GUES.

MACLEAN C.J.

not, after his transfer to Hooghly, exercise the power, which had been conferred upon him, when he was a Munsif of Baruipur, and that fresh power ought to have been specially conferred upon him. I understand that for many years the practice has been in such and similar cases not to confer any fresh power and that it has always been regarded that the power, having once been conferred, remains vested in the judicial officer in question notwithstanding he has been transferred from one district to another. It is very difficult for us, considering that many decisions have undoubtedly been based upon this view, which has been held for very many years, now to interfere. I am bound to say, speaking for myself, that, looking at the language of sub-section (*b*) of section 153, there is nothing in it to suggest that, when a judicial officer has once been specially empowered by the Local Government to exercise final jurisdiction under the section, that power determines, because he is transferred to another district, or that any necessity exists that he should again be specially empowered by reason of such transfer.

For these reasons, I think the Rule must be made absolute with costs.

COXE J. I agree.

Rule absolute.

S. M.