Before Mr. Justice Banerjee and Mr. Justice Harington.

1903
Dec. 18.

RAMANI PERSHAD NARAIN SINGH
v.
MAHANTH ADAIYA GOSSAIN.*

Second appeal—Bengal Tenancy Act (VIII of 1885) ss. 106, 109A—The words "a decision settling a rent, meaning of—Evidence Act (I of 1877) s. 21—Sale certificate, statement in—Admission.

The words "a decision settling a rent" in section 109A of the Bengal Tenancy Act do not mean and include any decision upon the question what is or what ought to be the rent. They mean only a decision settling a fair and equitable rent in place of the existing rent, and the words do not include a decision determining what the existing rent is.

Mathura Mohun Lahiri v. *Uma Sundari Debi*(1) referred to.

A second appeal lies to the High Court, from a decision of a Special Judge reversing or affirming a decision of a Settlement Officer, who decided under s. 106 of the Bengal Tenancy Act what was the rent payable by the plaintiff, it not being "a decision settling a rent" within the meaning of section 109A of the Bengal Tenancy Act.

Any statement, as to rent payable for a holding, made by a person in a sale certificate, which was obtained by him as purchaser of the holding, at a sale in execution of a decree against the former tenant, being in the nature of an admission, cannot be used as evidence on his behalf, as such a statement does not come within the exceptions to section 21 of the Evidence Act.

SECOND APPEAL by the defendant Ramani Pershad Narain Singh.

One Adaiya Gossain brought a suit under section 106 of the Bengal Tenancy Act in the Court of the Settlement Officer of Sewan for a declaration that the rent payable for his holding was Rs. 13-8 with cesses, and not Rs. 30-0-6 pie with cesses as recorded in the settlement khatian. The defendants, landlords, put

* Appeal from Appellate Decree No. 2686 of 1902 against the decree of G. Gordon, Special Judge of Sarun, dated the 23rd of August 1902, reversing the decree of Hem Chandra Chatterjee, Assistant Settlement Officer of Sewan, dated the 24th of June, 1901.

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in a written statement alleging, that the existing rent of the holding was Rs. 30-0-6 pies. The Settlement Officer gave effect to the defence and dismissed the suit. On appeal to the Special Judge, he, mainly relying upon a sale certificate, reversed the decision of the First Court and held that the rent was Rs. 13-8 as alleged by the plaintiff.

Babu Dwarka Nath Mitter, for the respondent, took a preliminary objection, that no second appeal lay to the High Court for the following reason. In cases of settlement of rent in areas where settlement of land revenue is not being or is not about to be made as in the present instance, an appeal to the High Court is allowed by section 109A, cl. (3) of the Bengal Tenancy Act. Clause (3) excepts decisions "settling a rent." Here plaintiff brought this suit to have it declared that the rent of the holding was Rs. 13-8 and not Rs. 30-0-6 pies, as recorded in the settlement khatian. This is a decision "settling a rent" within the meaning of section 109A of the Bengal Tenancy Act. The word "settle" means no more than determine a rent. The word "settle" is not used in the restricted sense of settling a fair and equitable rent within the meaning of section 105, cl. (1) of the Bengal Tenancy Act.

Babu Umakali Mookerjee (with him *Babu Akshoy Kumar Banerjee*) for the appellant. A second appeal lies in this case. The words "settling rent" in section 109A of the Bengal Tenancy Act mean settling a fair and equitable rent. The Settlement Officer in this case, did not settle any fair and equitable rent. The sale certificate is not admissible in this case. It cannot be used as evidence in favor of the plaintiff. It being in the nature of an admission, it cannot be used in favor of the person, who made it, as it does not come within the exceptions of section 21 of the Evidence Act.

Babu Dwarka Nath Mitter. The learned Special Judge's finding amounted to this, that he believed the patwari's evidence and decided the appeal on that evidence alone. He did not rely on the sale certificate for the purposes of the decision of the case. With regard to the statement in the sale certificate it was admissible under s. 21, cl. (3) of the Evidence Act, as showing a

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previous statement by the landlord that the rent was Rs. 13-8 and not Rs. 30-0-6 pies.

BANERJEE AND HARINGTON JJ. This appeal arises out of a suit brought under section 106 of the Bengal Tenancy Act for the decision of the question whether the rent payable by the plaintiff was Rs. 30-0-6 as recorded in the Record of Rights, or was Rs. 13-8 annas as contended for by the plaintiff.

The defendant urged that the entry in the Record of Rights was correct. The first Court gave effect to that defence and dismissed the suit, but upon appeal by the plaintiff the lower Appellate Court has reversed the first Court's decision and given the plaintiff a decree, holding that the rent was Rs. 13-8 as alleged by the plaintiff.

Against that decree of the lower Appellate Court, defendant No. 2 has preferred this second appeal. At the hearing of the appeal the learned vakil for the plaintiff-respondent took a preliminary objection that no appeal lay from the decision of the learned Judge below, who heard the case as a Special Judge, the decision appealed against being a decision settling a rent within the meaning of sub-section (3) of section 109(A) and therefore coming within the exception to the rule in that sub-section which allows an appeal from the decision of a Special Judge. The argument in support of this preliminary objection is that as the Court below has determined the rent to be Rs. 13-8 and not Rs. 30-0-6, its decision is a decision settling a rent.

We are unable to accept this argument as correct. The words "a decision settling a rent" do not in our opinion mean and include any decision upon the question what is or what ought to be the rent. They mean only a decision settling a rent in the sense of settling a fair and equitable rent in place of the existing rent, and the words do not include a decision determining what the existing rent is. This is clear in our opinion from sections 104 to 109(A), if they are read together. The words settling a rent are, in our opinion, used in a technical sense and not in what might be their ordinary signification. The view we take is in accordance with that taken by this Court in the case of

Mathura Mohun Lahiri v. *Uma Sundari Debi*(1). It is true that case was decided with reference to the provisions of the Bengal Tenancy Act, as they stood before the last amendment, but so far as the question now before us goes, the language of the law was substantially the same as it is now. The exception to the rule allowing appeals from the decision of a Special Judge related to "an entry of a rent settled under Chapter X," in lieu of which we have now the words "a decision settling a rent."

The preliminary objection must therefore fail.

The point urged in the appeal is that the lower Appellate Court was wrong in using the statement about rent in the plaintiff's sale certificate as evidence against the defendants.

We are of opinion that this contention is correct. The sale certificate was one obtained by the plaintiff as purchaser of the holding, the rent payable in respect of which is now in dispute, at a sale in execution of a decree obtained by him against the former tenant. The statement of the rent payable for the holding, as given in his sale certificate must, therefore, in all probability have been based upon materials furnished either by the plaintiff or his predecessor in title, the former tenant. The present defendants were no parties to the suit or the proceeding connected with the granting of the sale certificate. That being so the statement in the sale certificate must be taken to be in the nature of an admission by the plaintiff or his predecessor in title; and it can be used as evidence on his behalf only if it comes under one of the exceptions to section 21 of the Indian Evidence Act. Evidently it does not come under either of the first two exceptions, nor is it shown that it can come under exception (3), nor do we think that there is any provision in the Evidence Act, under which it can be treated as evidence against the defendant.

We must therefore hold that the learned Judge in the Court of Appeal below was wrong in using the entry in the sale certificate as evidence in this case.

Then arises the question as to whether, if that evidence is excluded, there still remains sufficient evidence upon which the judgment of the lower Appellate Court can stand; for, if that is so, regard being had to the provisions of section 167 of the

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Evidence Act, an improper admission of the sale certificate in evidence will be no ground for the reversal of the Judge's decision. But then this being a second appeal, and it not being open to this Court to determine any question of fact on evidence in this appeal, we cannot say how far the evidence improperly admitted affected the decision of the lower Appellate Court upon the question as to the amount of rent, unless the judgment on the face of it shows that independently of the evidence improperly admitted, the Judge upon the other evidence in the case came to the conclusion at which he has arrived. Now reading the learned Judge's judgment as a whole, it is impossible to say that his finding as to the amount of rent rested upon the other evidence in the case excluding the sale certificate. On the contrary, the language of the judgment shows that the sale certificate was considered necessary to support the Judge's conclusion; for he says :—"I think that the entry in the sale certificate in a case of doubt may be considered corroborative evidence, if there is no reason to believe it to be fraudulent."

We must therefore set aside the judgment and decree of the lower Appellate Court as being vitiated by the admission of inadmissible evidence, and send the case back to that Court in order that it may dispose of the appeal before it after excluding from its consideration the sale certificate in question. We may add that the view we take as to the necessity of a remand in such a case, is in accordance with that taken by this Court in the case of *Womes Chunder Chatterjee* v. *Chundee Churn Roy Chowdhry*(1).

The costs of this appeal will abide the result.

Appeal allowed; Case remanded.

S. C. G.

(1) (1881) I. L. R. 7 Calc. 293.