

Sarat Kumar Roy Vs. Surendra Nath Joardar and ors.

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Court : Kolkata

Decided On : Jan-19-1928

Reported in : AIR1928Cal428,108Ind.Cas.587

Appellant : Sarat Kumar Roy

Respondent : Surendra Nath Joardar and ors.

Judgement :

Cuming, J.

1. In the suit out of which this appeal arises the plaintiff sued the defendants to recover arrears of rent from the last two kists of 1326 to pous kist of 1329 at an annual rental of Rs. 34-5-31 pies with cesses and damages. His allegation was that the defendants' father purchased the holding in question on 15th September 1919, at an auction sale and that the defendants had been holding this jama since their father's death. The defendants contested the suit. They raised a number of objections. The only one with which we are concerned in the present appeal is that they claim to be entitled to the suspension of the entire rent on the ground that they have been dispossessed from a large portion of the holding by the landlord.

2. The Munsif overruled the objection of the defendants and decreed the suit. In appeal the learned Subordinate Judge found that the defendants had been dispossessed from some portion of the holding and that they were entitled to the suspension of the entire rent.

3. The plaintiff appealed to this Court and the appeal was heard by my learned brother Mr. Justice Roy and myself and we remitted the case to the lower appellate Court for a definite finding as to how much land the defendants' father actually came into possession when he purchased the holding at the auction sale and how much land they had been dispossessed from, if any, by the plaintiff and, if so, when. The learned Subordinate Judge has found that the defendants came into possession of at least 30 bighas of land when they purchased the holding at the auction-sale and that they were subsequently dispossessed by the plaintiff from no less than ten bighas of land in Baisakh or Joistha 1327.

4. Mr. Mitter who appears on behalf of the appellant contends and his contention has not been opposed by the learned vakil who appears on behalf of the respondents that at any rate he is entitled to the rent and cesses for the two kista of 1326. The Court having found that the dispossession did not take place till Baisakh 1327 clearly he is entitled to the rent for the last two kists of 1326.

5. With regard to the rent for the period subsequent to the dispossession Mr. Mitter

contends first of all that the tenants are not entitled to the suspension of the entire rent. He argues that as the tenants have been dispossessed from a portion of the demised property they are entitled only to an abatement of rent for the portion from which they have been dispossessed. He argues that the doctrine of entire suspension of rent in a case where the tenant has been dispossessed from only a portion of the demised properties does not apply with full force. He has referred us to the decision of the Privy Council in the case of *Katyayani Debi v. Uday Kumar Das* and to a decision of Mr. Justice B.B. Ghosh and Mr. Justice Bay in the case of *Susil Kumar Biswas v. Rajani Kanta Chakrabutty* : AIR1927Cal737 . Neither of these decisions; dealt with a case where the tenant, though once in actual possession, had been actually dispossessed by his landlord. In both those cases the tenant never got possession of the demised property. Further in the case of *Katyayani Debi v. Uday Kumar Das* , their Lordships of the Judicial Committee remark that the doctrine of suspension of payment of rent, where the tenant has not been put in possession of part of the subject leased, has been applied where the rent was a lump rent for the whole land leased treated as an indivisible subject. It has no application to a case where the stipulated rent is so much per acre or bigha. This remark, as far as I can see, does not assist the appellant in any way. No doubt every one of these cases is to be decided on the particular facts of the particular case and it is not possible to lay down any hard-and-fast rule when suspension of entire rent should be ordered or when only abatement of rent should be allowed. The learned vakil for the appellant has been unable to point out to me any single case where a tenant in possession has been dispossessed of a considerable portion of the demised property and only an abatement of rent has been allowed, more specially in a case where the settlement was for a lump sum and not for so much per bigha. I think this contention of the appellant cannot succeed.

6. Mr. Mitter has further contended that it is not a case of dispossession by a landlord qua landlord. The landlord purchased the adjacent property in execution of a rent decree which he himself had obtained against the tenant of that land and in execution of this decree he dispossessed the present defendant of some ten bighas of land. It would only be a refinement of the word 'dispossession' to say that this dispossession of the tenant is not dispossession by the landlord qua landlord but in his capacity as a tenant.

7. These are the only points urged in the appeal. The appeal, therefore, fails except for the modification regarding rent for the last two kists of 1326 with cesses and damages thereon.

8. There will be no order as to costs in the appeal.

Mukerji, J.

9. I agree.