

Brojendra Lal Ray, on His Death, Swarnamayi Ray and ors. Vs. Mubeswar Ali Choudhury and anr.

LegalCrystal Citation : legalcrystal.com/861843

Court : Kolkata

Decided On : Aug-29-1944

Reported in : AIR1944Cal426

Appellant : Brojendra Lal Ray, on His Death, Swarnamayi Ray and ors.

Respondent : Mubeswar Ali Choudhury and anr.

Judgement :

Nasim Ali, J.

1. This second appeal arises out of a suit for recovery of arrears of rent. The defendants took settlement of 16 bighas 15 cottas 9 chittaks of land in the district of Outcher (a temporarily settled district in the Province of Assam) from the plaintiffs by executing a registered kabuliat on 10th Bhadra 1341 B.S., corresponding to 27th August 1934, for 15 years at an annual rent of Rs. 70. The Assam (Temporarily Settled Districts) Tenancy Act, 1935, came into force on 1st March 1937. On 26th July 1939, the plaintiffs instituted the present suit for recovery of arrears of rent from 1341 to 1345 B.S. at the stipulated rate of rs. 70 per year. The defence of the tenants is that they are not liable to pay more than Rs. 7-8-0 per year i. e., five times the annual revenue of the disputed lands in view of the provisions of Section 44 read with Section 3 (17) of the Assam (Temporarily Settled Districts) Tenancy Act, 1935. The Munsif held that the plaintiffs are entitled to recover rent at the rate of its. 70 per year for 1341 and 1342 B.S. and at the rate of Rs. 7-8-0 par year for 1843, 1344 and 1345 B.S. Two appeals were preferred before the lower appellate Court one by the landlords and the other by the tenants. The learned District Judge dismissed both the appeals and affirmed the judgment and decree of the Munsif. The present second appeal is by the plaintiffs. The defendants have also filed cross-objections. The contention of the plaintiffs in their appeal is that the Courts below were wrong in holding that the plaintiffs were not entitled to get rent for the years 1343-45 B.S. at the kabuliat rate. Section 44, Assam Tenancy Act, 1935, is in these terms:

Except as provided form Sections 25 and 26, no rent agreed on between landlord and tenant or enhanced by Court shall exceed the maximum rent in respect of the land; nor shall any such amount which is in excess of the maximum rent be lawfully payable.

2. The words 'maximum rent' have been defined in Section 3, Clause (17) of the Act thus:

Maximum rent or rate of rent' of agricultural holdings or parts thereof held on cash rent means a sum representing in the case of Cachar five times and in the case of

other districts three times the revenue rate. Where agricultural holdings or parts thereof are held on produce rent 'maximum rent' means in the case of paddy one-half and in the case of jute one third of the actual produce thereof.

3. Before the Act came into force, plaintiffs had the right to recover rent at the stipulated rate of Rs. 70 per year. The question is whether this right of the plaintiffs has been touched by Section 44 of the Act. Provisions of a statute which touch a right in existence at the passing of the statute should not be applied retrospectively in the absence of express enactment or necessary intendment: Colonial Sugar Refining Co. Ltd. v. Irving (1905) 1905 A. C. 369, Delhi Cloth and General Mills Co. Ltd. v. Income-tax Commissioner, Delhi, Section 123 (i) (g) of the Act is in these terms:

Nothing in any contract between a landlord and a tenant made before or after the passing of this Act shall entitle a landlord where the rent is payable in produce to recover as rent produce in excess of half (or in the case of paddy one-third) of the gross produce of the land for the year for which rent is claimed.

4. This section expressly takes away the pre Act right of the landlord based on contract to recover produce rent in excess of half of the gross produce of the land. There is no provision in the Act which expressly takes away the pre-Act right of the landlord to recover cash rent at the contractual rate. The contention of the tenants however is that the necessary implication of the words 'nor shall be lawfully payable' in the last part of Section 44 is that the section is retrospective in its operation. The words 'any such amount' after the word 'shall,' mean 'amount of rent agreed on between landlord and tenant or enhanced by Court.' Before the Act came into force the Court had no power to enhance the rent. The Act for the first time empowers the Court to enhance the rent. The section therefore contemplates amount of rent agreed upon between landlord and tenant or enhanced by Court after the Act. We are therefore of opinion that contracts about rent after the Act are hit by Section 44 and that pre-Act contracts are not touched by this section. This view finds support from the omission of cash rent in Section 123 (g) of the Act. The plaintiffs are, therefore, entitled to recover rent at the contractual rate, i. e. Rs. 70 per year for the entire period in suit. The defendants in their cross-objection urge that the Courts below should have held that the plaintiffs' claim for rent for 1341 and 1342 is barred by limitation. Before the Assam Tenancy Act came into force the period of limitation for recovery of arrears of rent was six years. The Assam Tenancy Act, however, has reduced this period to three years. The Act was passed in 1935. Section 1 (2) of the Act is in these terms: 'It shall come into force on such date as the Local Government may by notification appoint in this behalf.' By notification under this section, the Act came into force on 1st March 1937. The cause of action for recovery of arrears of rent for 1341 and 1342 arose before the Act came into force. A right of suit is a vested right. The question is whether there is anything in the Assam Tenancy Act which shows that this vested right was taken away by the Act. There is no provision in the Act which expressly takes away this vested right. It is contended on behalf of the defendants that the necessary implication of the provision in Section 1 (2) of the Act that the Act shall come into operation at a date to be notified by the Local Government is that the Legislature intended that the period of limitation would apply to suit, the cause of action of which arose before the Act. In 3. Iswar Chandra Pal v. Pritilata Biswas : AIR1944Cal162, it has been held by a Division Bench of this Court that from the provision of a statute (Sylhet Tenancy Act 1936) which empowers the executive Government to fix by notification the date on which the Act is to come into

operation it cannot be inferred that the Legislature intended the Act to apply to suits the cause of action of which arose before the Act came into force. We are of opinion that this view is quite correct. We accordingly hold that the plaintiffs' claim for recovery of arrears of rent for 1841 and 1342 is not barred by limitation. The result therefore is that the cross-objections are dismissed and the appeal is allowed. Plaintiffs' suit is decreed in full with costs in all the Courts. There will be no Order for costs in the cross-objections.

Mitter, J.

5. I agree.

Sharpe, J.

6. I agree.

LegalCrystal - Indian Law Search Engine - www.legalcrystal.com