

Pershad Singh and ors. Vs. Ram Pertab Roy

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Court : Kolkata

Decided On : Sep-11-1894

Reported in : (1895)ILR22Cal77

Judge : Trevelyan and ;Ameer Ali, JJ.

Appellant : Pershad Singh and ors.

Respondent : Ram Pertab Roy

Judgement :

Trevelyan, J.

1. In this case the suit was brought by a landlord against his tenant praying (a) that it may be declared that the defendant had no right to build houses; (6) upon determination of the above prayer, the defendant may be ordered to remove the houses within a fixed time and reduce the land to its former condition; (c) if the defendant fail to remove the houses within the fixed time, he may be ejected from the land and khas possession awarded to plaintiff. The first question that was tried by the learned Munsif was as to whether the plaintiff had complied with the provisions of Section 155 of the Bengal Tenancy Act, and had given the notice therein provided for. He came to the conclusion that the notice was defective on the ground that the plaintiff did not therein ask for compensation for the breach. He also considered that on other grounds it was defective. There were raised before him, besides the first issue which refers to limitation, a question which does not

arise here, a second issue as to notice. The following was the third issue, namely: 'Were the houses asked to be removed built in Magh 1295 and Chait 1297 as stated in the plaint, or nine years ago as stated by the defendant?' That issue he decides in favour of the plaintiff. The next issue is the fourth issue: 'Is the defendant's holding mourasi, i.e., at fixed rates? If so, has he a right to use the land in any way he pleases?' That issue he decided also in favour of the plaintiff. The next issue is: 'For what purpose was the land first granted to the defendant? Is the building of the ghur detrimental to the object for which the lease was first granted? Is the value of the holding deteriorated by these buildings?' He comes to the conclusion on that issue that, instead of the defendant having caused the value of the holding to deteriorate he has, as a matter of fact, improved it. He declines therefore to give the plaintiff any relief. There was an appeal by the plaintiff to the Subordinate Judge, who only deals with the question arising under the Bengal Tenancy Act and on the question as to the omission of a demand for compensation in the notice, the Subordinate Judge agrees with the view taken by the Munsif. He does not agree with him as to the other questions regarding the notice which it is not necessary for us to consider now. He says, nothing about any other question. It does not appear before us whether or not any other question was argued before him.

2. The first and most important question which has been argued before us arises under Section 155 of the Bengal Tenancy Act. That section provides: '(1) a suit for the ejectment of a tenant on the ground-(a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy; or (b) that he has broken a condition on breach of which he is, under the terms of the contract between him and the landlord, liable for ejectment- shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and where the misuse or breach is capable of remedy requiring the tenant to remedy the same, and in any case to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.' The question really turns upon the meaning of the words 'and in any case;' if that means in any case whatever, it follows that there being statutory prohibition unless the notice exactly complies with the statute the Judge would be right. The argument of learned

Counsel comes to this that, if it was a case where no compensation could possibly be ascertained, it would be unreasonable to expect the landlord to give notice with regard to it. He says that in this particular case, with regard to what was alleged to have been done, it was impossible to ascertain the damages. Of course that argument would be very difficult to accept, if the Legislature meant every case, because we are bound to follow the Act. In support of this contention, our attention has been called to an English statute from which the first portion of Section 155 has been taken, namely, Section 14 of the Conveyancing and Law of Property Act of 1881. The words of the first portion of that section are practically the same as those of the first portion of Section 155, but the latter portion of Section 14 of the English statute is wholly different, and is intended for an entirely different purpose from the latter portion of Section 155, which provides for the nature of the decree. I have always thought it a great advantage where one can find an English statute resembling in its purpose and phraseology the Indian statute under discussion to get the assistance offered by the decisions of the Courts in England, but of course it is always necessary to see that these statutes are really resembling one another in their purposes and not only have an accidental resemblance in a portion of the section, which for convenience of drafting has been adopted by the draftsman of the Indian Act. There were cited before us cases which support the view taken by the learned Counsel, and there is no doubt that the case in the Court of appeal is distinctly in his favour, but here we find a difficulty in applying that case, because the first portion of Section 155 is directly controlled by the second portion of it, and we do not think that it is possible to give any reason for this distinction better than that in the remarkably able judgment given by the learned Munsif. He there points out, after going into the matter, that if there should be no loss to the landlord, there should be no ejectment or claim for compensation, and if, as a matter of fact, the landlord does not lose any money by this use of the land apart from the removing of the property, the result would be that there would be no ejectment. However that may be, there are the words of the Act. Whether it be difficult or easy to follow it in the notice, we think it clear that the omission of a demand for compensation in the notice prevents this suit being entertained. So much for Section 155. It is also argued that even if an action for ejectment does not lie, the plaintiff is entitled to an injunction. There is no doubt that this suit as framed is really a suit for ejectment;

the earlier portions of the prayer to which I have referred are merely ancillary to the question of ejectment, and on this question of notice the case has been argued. It does not appear that in the Subordinate Judge's Court anything else was suggested, and in the Court of the Munsif, who has tried all the issues, it does not appear that he was asked to give an injunction. It is necessary to see what the suit really is. It was a suit for ejectment and in that the plaintiff has failed. The appeal is dismissed with costs.

Ameer Ali, J.

3. This was a suit between a landlord and a tenant. There is no question that the defendant is an occupancy ryot holding lands within the zamindary of the plaintiff. The plaintiff's case is that the defendant has constructed upon his holding certain buildings which have rendered the land held by him unfit for cultivation. That is set out in para. 5 of the plaint. The plaintiff states further in para. 6 that on the 14th of January 1891 he served, under Section 155 of the Bengal Tenancy Act, a notice requiring the defendant to remove the houses and bring the land to its original state within one month from the date of service there of, failing which a suit would, on the expiration of the time mentioned, be brought by the plaintiff to cancel the defendant's tenancy, and to eject him from his land. The first Court held that the notice did not comply with the requirements of Section 155, which was a condition precedent to the institution of any suit under that section, and accordingly dismissed the plaintiff's action. The Subordinate Judge on appeal expressed himself thus:

The first Court has dismissed the suit on the following grounds:

First.-That the notice is defective, because it does not require the tenant to pay compensation for the misuse or breach.

Second.-That it is bad inasmuch as it was not served by the landlord, but by the proprietor.

The plaintiffs, who are the appellants before me, contend that neither of the said grounds is sufficient.

The question which I am now to try is whether the grounds relied upon by the first Court are enough to warrant the Court in dismissing the suit?

4. It is clear, therefore, that there were two points dealt with by the Subordinate Judge in his judgment-(i) whether the notice upon which the suit was founded was materially defective; and (ii), whether the view of the Munsif that the notice was not by the landlord was correct. The Subordinate Judge, does not seem to have been called upon to enter into any other question. He held that it was indispensable under Section 155 of the Bengal Tenancy Act that the notice should contain the demand for compensation, and as compensation was not asked for the suit was bad; on the second point he thought the view of the Munsif was not correct. He held so far in favour of the plaintiffs, but on the other ground he dismissed the appeal with costs:

5. In special appeal two questions have been raised-one that the notice was quite sufficient. That has been dealt with by my learned colleague, and I shall not deal with it in detail. The other point urged was that even if the plaintiff was not entitled to eject the defendant he was entitled to a declaration that the defendant had no right to build houses and to let them stand in the terms of prayer (a) in the plaint, and that further he was entitled to an injunction in accordance with prayer (6). Now, as I understand Section 155 of the Tenancy Act, it seems to me to be exhaustive in itself. The section may be divided into three parts. The first part of the section deals with two classes of cases, viz., a case where the tenant is using the land in such a manner as to render it unfit for the purposes of the tenancy. Secondly, the case of a tenant committing a breach of the terms of the contract between him and the landlord, which renders him liable to ejectment. The plaintiffs' suit is not founded on Clause (6) of the section; his suit is based upon Clause (a), that is, that in consequence of his building these structures he has rendered the land unfit for the purposes of the tenancy, and that is what is set forth in para. 9 of the plaint. Then the section describes how the landlord should proceed, in order either to have the lands brought back into the original condition in which they were, or to get relief for the breach of the conditions of the contract; it prescribes that he should serve a notice on the tenant, specifying the precise and particular misuse of the land under Clause (a), or of the breach under Clause (b), and if these two

acts are capable of being remedied, requiring him to remedy the same, and in any case asking him to pay reasonable compensation for either of these acts under Clause (a) or Clause (b). Then the section goes on to provide that if the tenant fails to comply with that demand within a reasonable time, namely, with the requisition asking him to remedy the breach or to pay compensation, the landlord would be entitled to bring a suit, the procedure for which is laid down further in Sub-sections 2, 3 and 4. Upon such a suit being brought if the conditions precedent have been complied with, the Court has the power to make a decree in the following way, namely, it may make a decree declaring the amount of compensation reasonably payable to the landlord, and declaring whether in the opinion of the Court the misuse or breach is capable of being remedied. If it is capable of being remedied the Court is to declare and direct that the defendant should remedy the same. In the other case the landlord would be entitled only to compensation. Subsection 4 further provides that, 'if the defendant within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.' The result, therefore, is that if the tenant pays the compensation for which he has been declared liable he cannot be ejected; if the misuse or breach is capable of being remedied, and he does not comply with the injunction of the Court to remedy it, he is liable to be ejected, and if he fails to pay the compensation awarded. he is of course liable also to ejectment; but where he pays the compensation, or where the act is capable of being remedied, and he has remedied it, there is no ejectment. It seems to me, looking at the scope of the section and the character of the Tenancy Act which covers all disputes between landlords and tenants, that any action of the landlord must proceed under and be governed by the rules laid down by the Legislature in the Tenancy Act, but, as already pointed out, it is not necessary to go into these questions, because the case of the plaintiff was really one for ejectment; he gave a notice for ejectment and asked for ejectment; and, although there were other prayers in the plaint, they were merely ancillary to the prayer for ejectment. I quite agree with the view that a demand in the notice for compensation was necessary. English cases on the construction of English

Statutes are of great assistance, sometimes in construing acts of the Indian Legislature where the Statutes are in pari materia, but excepting a verbal similarity between a portion of Section 155 of the Tenancy Act and a portion of Section 14 of the English Statute, which was referred to in argument, they do not seem to me to run on parallel lines. I agree, therefore, in dismissing the special appeal with costs.

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