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Court : Kolkata

Decided On : Jan-28-1895

Reported in : (1895)ILR22Cal480

Judge : Ghose and ;Rampini, JJ.

Appellant : Jaga Singh

Respondent : Chooa Singh

Judgement :

Ghose, J.

1. This suit arises out of proceedings taken by the landlord under the provisions of Sections 69 and 70 of the Bengal Tenancy Act for the appraisal and division of certain crops raised by a certain tenant. It appears that under the orders of the Collector an Amin was deputed for this purpose; and, on the 6th January 1887, the Amin reported that he had made a division of the crops, but that the landlord would not take his share thereof. Upon that, on the 11th January 1887, the Collector ordered the crops to be deposited with two independent persons,. and-accordingly the Amin deposited them with the. defendants, Chooa Singh and Jhummon Singh, who became depositaries of the plaintiff's share of the crops under a receipt which they executed and delivered to the Amin. That receipt runs thus: 'We herewith take in deposit 427 maunds 39 1/2 seers of paddy, which is the share of Jaga Singh, ticcadar of Mahabatpore, and agree that we shall deliver up

the paddy as soon as we are called upon to do so.' In the month of July 1890, an application was made to the Collector by the plaintiff for obtaining his share of the produce, and, in the course of the proceedings that were then taken by the Collector upon this application, Jhummon Singh appeared and stated by an application that the whole of the crops, with the exception of 40 maunds, had been damaged or destroyed by rain. Thereupon, the Collector, on the 10th February 1891, recorded an order, simply saying that he could not help the plaintiff. The present suit was brought on the 10th August 1891 to recover from both Chooa Singh and Jhummon Singh the value of the crops which were deposited with them.

2. The Court of First Instance gave a partial decree to the plaintiff against both the defendants. Against this decree, Jhummon Singh did not appeal, but Chooa Singh, the other defendant, did; and, upon his appeal, the learned District Judge has dismissed the suit so far as he is concerned. The grounds upon which the judgment of the District Judge proceeds, as far as we can gather are two: First, that having regard to the provisions of Section 70, Clause 5, of the Bengal Tenancy Act, this suit is not maintainable in the Civil Court; and, secondly, that there is no privity as between the plaintiff and the defendants, and the plaintiff has no cause of action against them.

3. It will be observed that Sections 69 and 70 refer to and contemplate proceedings between the landlord and the tenant. They have no reference whatsoever to a third party like the present defendants, who, in the course of those proceedings, became depositaries or bailees. Clause 5 of Section 70, to which the Judge refers, runs as follows: 'The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final, and shall, on application to a Civil Court, by the landlord or the tenant, be enforceable as a decree.' Beading Sections 69 and 70 together, we think there can be no doubt, as I have already observed, that they refer to proceedings between the landlord and the tenant: and this is emphasized by the last portion of Clause 5. In this view of the matter, we think that when a plaintiff seeks relief in the Civil Court, not against his tenant, but against a third party, a depositary or bailee, it is not barred by anything contained in Sections 69 and 70 of the Bengal Tenancy Act.

4. As to the second ground made against the plaintiff by the learned Judge, it seems to us that the receipt of the 19th January 1887, to which reference has already been made, does establish privity between the plaintiff and the defendants. No doubt, the order that is referred to in the last portion of the receipt is an order to be made by the Collector; but this order, it is obvious, is an order to be made in the interest of the plaintiff. That being so, and the defendants having received charge of the crops as belonging to the plaintiff, they are bound to make them over to him. They became depositaries or bailees, and as such they were bound to take that care which a prudent owner would ordinarily take of similar property belonging to himself. If it appears upon the evidence that they did take such care with the crops belonging to the plaintiff, and that they were damaged or destroyed by reason of circumstances over which they (defendants) had no control, no doubt the plaintiff would not be entitled to recover any damages as against them. But if, on the other hand, it does appear upon the evidence that they failed to take such care, and by reason of their negligence the crops were damaged or destroyed, then we think the plaintiff would be entitled to recover as against them compensation for the loss sustained by him. We think, therefore, that the judgment of the learned District Judge cannot stand. The case will accordingly be remanded to the Lower Appellate Court for retrial. The costs will abide the result.