

Surja Kanta Acharjee Vs. Buneswar Shaha and on His Death His Son, Heir and Legal Representative Jotindra Lal Shaha, by His Mother and Guardian Kissori Dasi

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Court : Kolkata

Decided On : Dec-07-1896

Reported in : (1897)ILR24Cal251

Judge : Banerjee and ;Rampini, JJ.

Appellant : Surja Kanta Acharjee

Respondent : Buneswar Shaha and on His Death His Son, Heir and Legal Representative Jotindra Lal Shaha, by His Mo

Judgement :

Banerjee and Rampini, JJ.

1. In these appeals, which arise out of suits for enhancement of rent and for additional rent for excess lands, two questions have been raised on behalf of the appellant: first, whether the Lower Appellate Court was right in relying upon the dak(sic)hilas produced by the defendants when they have not been duly proved; and, second, whether the Lower Appellate Court, upon the facts found by it, was right in dismissing the claim for additional rent for excess lands.

2. With reference to the first point this is what the Lower Appellate Court says in its judgment: 'It has been contended on behalf of the appellant that some rent receipts have not been proved and some have been disproved by the witnesses. The defendant, however, has proved them all by saying that he received the receipts on payment of rent. This I consider sufficient proof. The nature and appearance of the receipts convince me of their genuineness. The very variations that they show in the payment go to show their genuineness.' This, it is contended by the learned Advocate-General, is not sufficient to show that the receipts have been duly proved, and, in support of his contention, he relies upon the cases of *Ramjadoo Gangooly v. Luckhee Narain Mundul* 8 W.R. 488 and *Bharut Roy v. Gunga Narain Mohapattur* 14 W.E. 211. All that these two cases lay down is that there must be some evidence to prove the genuineness of the rent receipts which a tenant defendant may file. They do not, however, lay down any hard-and-fast rule as to what the nature of the evidence necessary to prove rent receipts should be. On the other hand, it has been held in the cases of *Raj Mahomed v. Banoo Rasmah* 12 W. E. 34 and *Madhub Chunder Chowdhry v. Promotho Nath Roy* 20 W. R. 264 that where the genuineness of a rent receipt is sworn to by the tenant by whom the rent has been paid, that is legally sufficient to prove the receipt, notwithstanding that the person whose signature it bears has not been examined. Having regard to these authorities, we think that the finding arrived at by the Lower Appellate Court, which considers the evidence of the defendant sufficient to prove the genuineness of the receipts, must be taken to be unassailable in law.

3. Then, as to the second ground, the Lower Appellate Court observes: 'The onus is clearly on the plaintiff. He must show that the defendant is holding lands in excess of what he is paying rent for, and in order to do that, he must show for what quantity of land the defendant is paying rent. This the plaintiff has failed to do. If that is so, we do not think that there is any ground for our interfering with the decision of the Lower Appellate Court upon this point in second appeal.'

4. We should add that a third point was urged which was this, that the Lower Appellate Court was wrong in allotting the amounts covered by some of the rent receipts to different years without any evidence to show that they were for those particular years. We think it was perfectly open to the Lower Appellate Court which

had to deal with the facts of the case to say whether, taking the receipts which extend over a number of years together, and having regard to the fact that the receipts did not specify the years to which the amounts relate, the amounts paid in any particular year were partly for the rents of that year and partly for the arrears due in respect of previous years.

5. The grounds urged before us, therefore, all fail, and the appeal must be dismissed with costs.

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