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Court : Kolkata

Decided On : May-03-1881

Reported in : (1881)ILR7Cal298

Judge : Richard Garth, C.J. and ;McDonell, JJ.

Appellant : Punnoo Singh and ors.

Respondent : NirghIn Singh and ors.

Judgement :

Richard Garth, C.J.

1. This suit is brought against the defendants for the rent of a jote for the years 1283, 1284, and 1285, the plaintiffs claiming at the rate of Rs. 2 per bigha.
2. They say in their plaint that they are, properly speaking, entitled to rent at the rate of Rs. 2-8 per bigha, but that the recovery of such higher rent depends 'upon the adoption of other steps,' by which we understand them to mean, that to recover the higher rent they must bring a suit for enhancement.
3. The answer of the defendants is this, that the plaintiffs brought a previous suit against them for the years 1281 and 1282, in which they claimed rent for the same jote at the rate of Rs. 2-8 per bigha; that their answer to that suit was, as it is now, that their proper rent was fifteen annas per bigha; and that in that suit, as the plaintiffs failed to prove the rate of Rs. 2-8 [301] which they claimed, a decree was

given in their favor for the sum which the defendants admitted,-namely, at the rate of fifteen annas. The defendants say, therefore, that as fifteen annas was adjudged by the Court to be, as between them and the plaintiffs, the proper rate of rent for the years 1281 and 1282, and as nothing has occurred since to alter that rate, the plaintiffs cannot recover the rent which they claim in this suit,-namely, at the rate of Rs. 2.

4. Both the lower Courts have adopted the defendants' view of the matter. They say, that, in the former suit, the rent was recovered by the plaintiffs at the rate of fifteen annas per bigha for the years 1281 and 1282, and that the plaintiffs cannot recover more without bringing a suit for enhancement.

5. Now, for the purpose of understanding rightly the effect of the judgment which was given in the former suit, we think it necessary to refer to the proceedings, not only in that suit, but in five other suits which were brought at the same time against other tenants by the same plaintiffs, and in which the latter claimed rent for the years 1281 and 1282 at the rate of Rs. 2-8 per bigha.

6. In all these suits the defendants alleged that proper rate of rent was fifteen annas. The Munsif found that the plaintiffs had failed to prove the rate which they claimed; and that the fifteen annas alleged by the defendants respectively was the proper rent. So in each case he gave the plaintiffs a decree accordingly.

7. Appeals were then preferred in each of the cases to the District Judge, who affirmed the decision of the Munsif, but in a very equivocal form; and it is upon the language and meaning of his judgment that the question which we have now to decide in this case depends.

8. After considering the question, whether the plaintiffs had proved their case, and whether the proper rate of rent was Rs. 2-8, he found that Rs. 2-8 was not the proper rate. He apparently made no enquiry, and arrived at no decision as to whether the rate alleged by the defendants was the proper one; indeed, he states, that 'the rate is very likely to be false.' But he nevertheless confirmed the decision of the Munsif, giving the plaintiffs in each case a decree at the rate alleged by the defendants.

9. He then goes on(sic)the request of the plaintiffs' pleader, I record the fact, that I do not(sic)t that rent has hitherto been paid at the rate alleged by defendants. I merely find that it has not been paid at the rate alleged by plaintiffs.'

10. That being the judgment of the District Judge in all the cases before him, five of those cases came up on appeal to the High Court. The ease against the present defendants could not be so appealed, because the value of the suit was not sufficient to admit of it. But we desire to refer to the judgment of the Division Bench of this Court in the cases which were appealed, because that judgment puts a construction upon the judgment of the District Judge, with which we entirely agree.

11. The learned Judges of this Court (Jackson and White, JJ.) delivered judgment in one of the appeals only (No. 141 of 1877), and the effect of their judgment was, that the District Judge had come to no decision at all as to what the proper rent was.

12. Mr. Justice JACKSON, after stating what was the contention of the plaintiffs in second appeal,-namely, that the District Judge had not found any rate of rent to be the proper one, and that he was bound to decide that question, goes on to say:- 'The Courts are bound to ascertain, as closely as they can, what the real controversy between the landlord and the ryot is. On this account, I think the Lower Appellate Court ought to have ascertained what rate of rent was payable to the plaintiffs, if the rate of Rs. 2-8 was not payable; and as that Court has intimated something more than a doubt, whether the defendants had made a true statement of their case, I think the case must go back to the Court below, in order to a further trial of that question.'

13. The High Court remanded the case, in order that the District Judge might find, what he had not found when the case was before him, what was the proper rent payable by the defendants; and it appears that, on the remand, the then District Judge found that Rs. 2 was the proper rent payable by the defendants [303] for the years 1281 and 1282. That being the result of the suits which were appealed to the High Court, we have now to see, ho(sic) far the parties to this present suit are affected by the judgment of the District Judge in the suit between the plaintiffs and

the present defendants, which was not appealed to the High Court. Is that judgment binding upon the parties to this suit, as having determined what was the proper rate of rent for the years 1281 and 1282

14. We entirely agree with the learned Judges of this Court, that the judgment of the District Judge in the former suits determined nothing of the kind. His judgment is so far binding between the parties as regards the rent for the years 1281 and 1282, that the plaintiffs could bring no other suit against the defendants for the rent for those particular years. But as the District Judge professedly did not determine the question between the parties, what was the proper rent due by the defendants for those years, we think that his judgment in no way estops the plaintiffs in this suit from proving what the proper rate of rent was for the years 1283, 1284 and 1285.

15. It was one thing to adjudge that the plaintiffs should recover from the defendants as the rent for those years the sum which the defendants admitted to be due. It was another thing to adjudge that the sum so admitted by the defendants was the proper amount of rent.

16. We must, therefore, remand this case, and the analogous cases which depend upon it, to the Munsif's Court, for retrial. We observe that the Munsif appears in the Court below to have received in evidence the decrees which were made by the District Judge on remand in the other five cases against other defendants. It is clear that he has no right to do this. He is bound to try this and the analogous cases upon their own respective merits, and to ascertain what is the proper amount of rent in each case.

17. The costs of this appeal will abide the result; and the analogous cases will be governed in all respects by this decision.