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SooperKanoon Citation : sooperkanoon.com/864785

Court : Kolkata

Decided On : Jun-26-1919

Reported in : AIR1919Cal79,53Ind.Cas.271

Judge : Newbould, J.

Appellant : Rakhal Chandra Chatterjee and ors.

Respondent : Bhabadeb Chatterjee

Judgement :

Newbould, J.

1. These 13 appeals arise out of the same number of applications for enhancement of rent before the Settlement Officer and subsequent appeals to the District Judge of Burdwan. The applications were made under Section 105 of the Bengal Tenancy Act, and the Settlement Officer granted increase of rent at 6 annas in the rupee on the ground of the general rise in price of local food stuffs.

2. The defendants-appellants' main contention was that they were not liable to pay enhanced rent, as they had leases which gave them the right to hold the land at the same rent in perpetuity. There appears to have been some delay in producing them and pleading on the basis of these leases. But they were produced before the parties went to trial and an issue was framed: 'Are these jamas not liable to enhancement on the ground that mokarari right was confirmed under contract by

pattas granted by previous putnidars?' The first Court held that the mokarari right created by these leases was an incumbrance from which the putni right is free under Section 11 of the Putni Regulation, VIII of 1819. The lower Appellate Court held that the Settlement Officer was wrong in treating the defendants as tenure-holders whose rights become voidable on the sale of the putni under the Regulation. He held that they were hereditary resident cultivators, to whom the proviso to Section 11 of that Regulation was applicable. But he held that that proviso did not protect them from liability to pay higher rent on proof of the condition which made their rents liable to enhancement under the Bengal Tenancy Act.

3. Here I think the lower Appellate Court was wrong. On the finding that the defendants were resident hereditary cultivators, they were dearly entitled to the protection of the proviso in the 3rd Clause of Section 11 of the Putni Regulation. That Clause provides that nothing contained in the Section shall entitle the purchaser of a Taluk to cancel bona fide engagements made to such tenants by the late incumbent, except it be proved in a regular suit, to be brought by such purchaser for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor. The language of the Section seems perfectly clear, and in fact the learned Pleader for the respondent has not tried to support the view taken by the District Judge that it is sufficient to prove what is a fair rate allowable at the present moment. It has been proved in all the oases to which these appeals relate except one, and that is Suit No. 1688 of 1892 which corresponds to Second Appeal No. 655 of 1918, that there were engagements made between the tenants and the previous putnidar. No suggestion is made that these engagements were not made in good faith, and until these engagements are cancelled, the defendants are not liable to pay any rate in excess of these engagements.

4. It is contended that these tenants, by allowing themselves to be entered in the Record of Rights as occupancy raiyats and by allowing the plaintiff landlord to treat them as occupancy raiyats, in effect consented to the cancellation of the engagements under which they were allowed to hold the land at a fixed rate. It seems to me perfectly clear that such conduct on their part could not have the

effect of putting an end to their rights under their leases, nor does their action amount to an estoppel.

5. It is also contended on behalf of the respondent that the tenants, by accepting these leases and becoming raiyats at fixed rates, lost the status which they had as resident hereditary cultivators. The answer to this objection will be found in the case of Sheikh Mahomed Assanoollah Chowdhry v. Shamshir Ali (1) and in the case of Sarbananda Nath Bhowmik v. Rana Gazi (2). The defendants, being protected by the provisions of this clause, that is, 3rd Clause of Section 11, are entitled to rely on their leases granted by the previous putnidar and are not liable to have their rents enhanced under the provisions of the Bengal Tenancy Act. Section 195 (e) provides that the provisions of the Putni Regulation relating to putni tenures shall not be affected by the Bengal Tenancy Act. If under this Regulation the holder of a putni can only enhance the rent of his tenants by special procedure under that Act, he cannot do so by an entirely different procedure under the Bengal Tenancy Act. Further, even if it be held that a proceeding under Section 105 for enhancement of rent is equivalent to a regular suit referred to in this proviso to Section (1), it must be held that the plaintiff cannot succeed in this suit as he had produced no evidence whatever to show that a higher rate of rent would have been demandable at the time when the permanent leases were granted.

6. In Appeal No. 655 of 1918 already referred to, in the absence of a lease it cannot be held that there was any bona fide engagement proved to have been made with the tenant permanently fixing his rent. In the absence of proof of such engagement the tenant as a resident and hereditary cultivator gets no protection from this proviso.

7. In the result, therefore, Second Appeal No. 655 of 1918 is dismissed with costs. The remaining Appeals No. 544, 645 to 654 and 656 of 1918 are decreed, the judgments and decrees in these cases are set aside and the suits dismissed with costs in all Courts.

8. I assess the hearing fee in each case at one gold mohur.

