

Sirdhar Roy Vs. Rameswar Sing

Sirdhar Roy Vs. Rameswar Sing

SooperKanoon Citation : sooperkanoon.com/866015

Court : Kolkata

Decided On : Dec-07-1887

Reported in : (1888)ILR15Cal166

Judge : W. Comer Petheram, C.J. and ;Ghose, JJ.

Appellant : Sirdhar Roy

Respondent : Rameswar Sing

Judgement :

1. Sections 61 to 65 of the Bengal Tenancy Act lay down the procedure in regard to the deposit of rent by a tenant; and the question we have to determine in this case is whether, after the Court has received rent from a tenant and granted him a receipt, the zemindar is entitled to come in and ask to be heard upon the matter of the deposit, and to have the order of deposit cancelled.

2. Section 61 of the Act lays down the case in which a tenant may present to the Court an application for permission to deposit his rent, as also the particulars which the petition is to contain. Section 62 provides that, if it appears to the Court that the applicant is entitled to make the deposit, it shall receive the rent and grant a receipt. It would appear upon a consideration of these two sections that, if a verified application is made to the Court, and if it contains the grounds under which an application under Section 61 is authorized to be made, and if it also contains the particulars which must be mentioned, the Court is bound to receive the rent;

and give a receipt to the tenant. The Court is not authorized, at this stage of the proceeding, or at any subsequent stage, to enter into a judicial enquiry as to whether sufficient grounds in law exist entitling the tenant to make the deposit. We then find that, under Section 63, the Court is to affix a notification in the Court-house on the receipt of the money; and if it is not paid away within the period of 15 days, a notice of the receipt of the said deposit is to be served upon the zemindar; and under Section 64 the zemindar may apply if he pleases to receive the amount deposited.

3. These are the only provisions which the Bengal Tenancy Act has laid down in regard to the deposit made by a tenant; and it will be observed that there is no machinery whatsoever provided for the Court to enter into a judicial enquiry in connection with the matter of this deposit, nor is there any provision entitling the zemindar to come in, and to be heard, upon the subject. And it seems to us that, so far as the tenant is concerned, after the deposit is made and receipt granted, the Court is functus officio, and is not authorized to return the money to the tenant upon an application made by the zemindar.

4. It was strongly pressed upon us that, when in Section 61 the Legislature uses the words 'the full amount of the money then due,' and in Section 62 'the amount of the rent payable by the tenant,' it intends that it is only in cases where there is no dispute as to the amount of rent of the holding that the tenant is entitled to deposit the rent, and the Court is authorized to receive such deposit; and that the receipt granted by the Court operating as an acquittance as against the landlord for the amount of the rent payable and deposited by the tenant, it would be an apparent injustice to the zemindar, if he was not entitled to come in, and to be heard, upon the matter. But it seems to us that this contention cannot be maintained. The words 'the full amount of the money then due' as they occur in Section 61 do not, as we read them, mean anything more than the words 'what he shall consider the full amount of rent due from him at the date of the tender to the zemindar' as they occur in Section 46 of Bengal Act VIII of 1869, which has now been repealed by the Bengal Tenancy Act. The provisions entitling a tenant to deposit his rent in Court were introduced for the first time in the year 1862 (Bengal Act VI of 1862), with a view to protect tenants from harassment by zemindars, and

to save them from costs, interest, and damages being awarded against them in a suit by the zemindar for rent; and it appears to us that the words in Section 61 and Section 62 of the Bengal Tenancy Act referred to above have no relation whatsoever to the amount of rent justly due or justly payable, but only to such rent as the tenant at the time of the deposit considers to be the rent due and payable. It is entirely at the option of the zemindar either to receive the rent deposited or not just as he pleases. He may, if he objects to the amount of rent payable by the tenant for his holding, bring a suit under Section 158 of the Act to have that matter determined, or he may bring a suit for the recovery of the whole of the arrear of rent due to him up to the date of deposit within six months from the date of the service of notice upon him, disregarding altogether the deposit made by the tenant; and if in that suit it be proved that the tenant had, without reasonable or probable cause, neglected or refused to pay the amount of rent due to the zemindar, the Court might award to him damages and costs in addition to the rent. But if, on the other hand, it appears that the suit of the zemindar was without reasonable or probable cause, the Court might award the tenant damages as against the landlord (see Section 68 and Schedule III, Part I, Article 2 of the Bengal Tenancy Act).

5. Upon these considerations it seems to us clear that when a deposit is made by a tenant and the Court grants him a receipt, the zemindar cannot in any way be prejudiced, and that the tenant makes such a deposit at his own risk.

6. A question was raised before us as to whether the Munsif was authorized to entertain an application for review of his previous order, and Mr. Woodroffe relied strongly upon the case of *Reasut Hossein v. Hadjee Abdoollah* 2 C. 131 : 3 I.A. 221. But in the view that we take of this matter, the question is not one of review, but whether the Munsif, after the deposit was made and receipt granted, had jurisdiction to entertain the application by the zemindar. Regarding it, however, as a question of review, it seems to us that it is only where a party is affected and bound by the order reviewed against, and when he has a right to be heard in the matter, that he can apply for review, but not otherwise; and in this view the case of *Reasut Hossein v. Hadjee Abdoollah* has no application whatsoever.

7. For these reasons we think that this rule must be made absolute, and the order of the Munsif of the 2nd February 1887, set aside.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com