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Court : Kolkata

Decided On : Jul-12-1921

Reported in : AIR1921Cal77,66Ind.Cas.876

Judge : Lancelot Sanderson, C.J. and ;Richardson, J.

Appellant : Bhubaneswar Bhattacharjee

Respondent : Dwarakeswar Bhattacharjee and ors.

Judgement :

Richardson, J.

1. This is a second appeal in a suit for rent. Plaintiffs Nos. 1 to 3 and defendant No. 3 are co-sharer landlords under whom defendants Nos, 1 and 2 are' tenants in respect of a certain holding:, The plaint concludes with the following prayers (a) That a decree may be passed against the principal defendants (meaning defendants Nos. 1 and 2) for Rs. 213 14 annas in claim and all costs of the suit together with interest op to the date of realization ; and (6) that in case it be proved that the pro forma defendant No. 3 has realized any paddy, etc., due to the plaintiffs from the defendants, then a decree may be passed for the said sum together with damages and costs as against the pro forma defendant No. 3 on placing him in the category of principal defendants by amending the plaint.

2. There is a farther prayer for general relief with which we are cot concerned.

3. The rent claimed directly from defendants Nos. 1 and 2 and indirectly from defendant No. 3 was due for the years 1320 and 1321. I should also mention that the claim was for the money value of rent payable in kind.

4. Both the Courts below have concurred in finding that by far the greater part of the rent due for the two years was in fact collected by the defendant No. 3. The result is that the alternative claim against defendant. No. 3 has been the principal subject of controversy throughout.

5. In the Trial Court the learned Munsif held that the claim against defendant No. 3 in respect of the years 1320 was barred by limitation under Article 62 of the Limitation Act. That article applies to suits for 'money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use' and the period of limitation is three years from the date when the money ib received. The Munsif gave the plaintiffs a deoree against defetdant No. 3 for their share of the rent for 1321 solicited by that defendant. The plaintiffs appealed and the learned Subordinate Jrdge, while be took practically the same view of the case on the merits, was of opinion tlat the claim against defendant No. 3 in respeat of the year 1320 was governed not by Article 62 but by the residuary Article 120 under which the period of limitation is six years from the time when the right to sue aosrues. The decree of the Subordinate Judge, therefore, makes the defendant No. 3 liable to the plaintiffs for their abate of the rent of both years.

6. The appeal before us is preferred by the defendant No. 3 and discntsion has turned mainly on the question of limitation. It has been conceded that on the faots found below the defendant No. 3 has no defence eo far as the claim against him relates to the year 1321. As regards the claim for the year 1320 the learned Vakil for the defendant No, 3 has ' given us a number of articles to choose from. He contends that if Article 62 does not apply then the article applicable is either Article 48 or Article 49 or Article 109. The period of limitation under all these Articles is three years counting from a date which would make the plaintiffs out of time. The learned Vakil for the plaintiff?, on the other hand, has argued that the lower Appellate Court was right in applying Article 120.

7. In my opinion, the claim in question is not a claim for specific moveable property within the meaning of Article 48 or Article 49. The difficulty about Article 62 is that, as that article is worded, it dees not seem to be applicable to a claim in respect of rent collected by the defendant No, 3 in kind and in point of fact the case for the defendant No. 3 was rested mainly on Article 109.

8. Article 109 applies to a suit 'for the profits of immoveable property belonging to the plaintiffs whioh have been wrongly received by the defendant.' The article is in every day use in the class of suits which it primarily oontemplateF, namely, suits for mesne profits against a trespasser. The defendant No. 3 is not a trespasser and without saying that the question is free from all difficulty, 1 vary much doubt whether the artiale can have any application at all to a suit by one od sharer against another for a share of the reni olleitod. by the latter, the rent being du' in respect cf land held by the co sharers not separately but jointly. It is said that it must be inferred from the findings of fast arrived at by the Courts below that the defendant No. 3 received the rent wrongfully, Thpt is not the very meritorious argument urged : on behalf of the defendant No. 3. It is true that the Courts below have found that the defendant No. 3 put pressure on the tenants to par their rent to him. It is also true that the defendant No, 3 set np in defence to the suit an arrangement between himself and the plaintiffs nnder which the latter were to take the entire rent for a' certain period and then he was to take the entire rent for' another period, a defence which has been rejectee). But this negative conclusion does not necessarily lead to the positive conclusion that at the time the defendant No. 3 collected the rent, he intended to defraud his oo sharers. The pleadings suggest a quarrel between co-sharers as to which of them should have the right to collect the rent due to all and as to the state of the acoounts between them. At any rate, the applicability of Artiale 109 does not seem to have been suggeited in the Courts be'ow so that those Courts were given no opportunity to apply their minds to the precise question raised before us, whether as between himself and the plaintiffs the defend-'^ant No. 3 received tbe rent; 'wrongfully'' within the meaning of the article.

9. The defendant No. 3 did not implead the defendants Nos. 1 and 2 as respondents to this appeal. On behalf of the plaintiffs, however, notice was given

to 'he defendants Nos. 1 and 2 to appear at the hearing so that, if necessary, tbe plaintiffs might claim over against them. These defendants now ask for their costs. In my opinion, regard being had to the result, their costs should be paid by the plaintiffs, The plaintiffs will get their costs of the appeal from the defendant No. 3 and the defendants Nos. 1 and 2 will get their costs of to-day's hearing from the plaintiffs, the hearing fee in the case of the defendants Nos. 1 and 2 being assessed at one goldmohur.The rule brought up with the appeal is discharged without costs.

Lancelot Sanderson, C.J.

10. I agree that the appeal should be dismissed and the Bala discharged and I agree also with the order as to costs as stated by my learned brother.

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