

Altap Ali and ors. Vs. Srish Chandra Dutta and ors.

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SooperKanoon Citation : sooperkanoon.com/867921

Court : Kolkata

Decided On : Mar-13-1933

Reported in : AIR1933Cal864,147Ind.Cas.740

Appellant : Altap Ali and ors.

Respondent : Srish Chandra Dutta and ors.

Judgement :

Guha, J.

1. The plaintiffs in the three suits in which these three appeals have arisen, prayed for realisation of arrears of rent for the period for 1335 to the Bhadra Kist of 1338 B.S., in respect of three tenancies. In addition to the claims for recovery of arrears of rent for the period mentioned, there was a prayer for enhancement of rent on the ground of rise in prices, as provided by Section 30, Ben. Ten, Act. The tenants defendants raised various questions in resisting the plaintiff's claim for rent as made in the suits. It was pleaded that the suits were not maintainable, and that the defendants did not hold the jamas in respect of which rents were claimed, under the plaintiffs. As indicated by the Court of appeal below, the question of the maintainability of the suits for recovery of arrears of rent, as also the question of the relationship of landlord and tenant between the parties, were the main questions at issue between the plaintiffs and the defendants. The trial Court observed in its judgment that it was futile to raise complicated issues in these suits

for rent, and did not apparently decide the questions of title indicated in the same. The Court, however was asked to decide the question of liability of the defendants, to pay-rent on the basis of realization of the same; and the decision of the Court of first instance went against the plaintiffs: the suits were dismissed.

2. On appeal the learned Subordinate Judge in the Court of appeal below, observed that the materials before the Court were not convincing enough to lead to an inference that the plaintiffs had not the title in them to receive rent from the defendants, and that leaving aside the question of title which was not necessary to investigate in these rent suits, it could not be held that the plaintiffs should be deprived of their right to get rents from the defendants in these cases for the period in suit, as they (the plaintiffs) were in receipt of rents for the previous years; that if any other party had a better title, it was open to that party to bring an action against the plaintiffs for establishment of that title. The plaintiffs' suits were accordingly decreed by the Court of appeal below, so far as the claims for recovery of arrears of rent were concerned, and the cases were remanded to the primary Court for decision on the issues as to whether the plaintiffs were entitled to enhancement of rent under Section 30, Ben. Ten. Act, and if so, to what extent. The claims for realization of arrears of rent as made by the plaintiffs in the suits, and the claims for enhancement of rent, which, according to the statements in the plaints in the suits, which were to take effect-after the period for which there were the claims for recovery of arrears of rents-were kept distinct and separate. This was the obvious course to be adopted in view of the claims made in the plaints as the plaintiffs had not claimed recovery of arrears of rent at an enhanced rate, after determination of the amount of enhancement under Section 30, Ben. Ten. Act. So far as the decision and decrees of the Court of appeal below, entitling the plaintiffs to realise arrears of rent as claimed in the suits, the defendants have appealed to this Court.

3. A preliminary objection was taken on behalf of the plaintiffs-respondents that the appeals to this Court were not maintainable, regard being had to the provisions contained in Section 153, Ben. Ten. Act. In view of the claims separately made in the plaints for recovery of arrears of rent for the period mentioned., and for enhancement of rent, the claims not being for rent at an enhanced rate, I have no

hesitation in coming to the conclusion that the appeals cannot be held to be maintainable under the law. The suits, so far as they related to arrears of rent for the period from 1335 to the Bhadra Kist of 1338 B.S., were obviously suits in which claims for recovery of rent within the meaning of Section 153, Ben. Ten. Act, were made, and there was no question of assessment of rent involved in those claims before the Court. As has been indicated above, the claims for recovery of arrears of rent at a specified rate, and the claims for enhancement under Section 30, Ben. Ten. Act, were kept altogether distinct and separate by the plaintiffs, and the Court below in passing decrees in favour of the plaintiffs had adopted that course.

4. In the above view of the cases before me, regard being had to the reason for the decision of this Court in the case of Beni Madhab v. Bijoy Chand AIR 1926 Cal 1182, with which I am in entire agreement, the appeal to this Court preferred by the defendants-appellants which clearly relate to the claims made by the plaintiffs-respondents, for realisation of arrears of rent for a particular period, at the rate specified, must be held to be not maintainable. It may be mentioned that the decision of this Court in the case of Dhanukdhari v. Baburam (1909) 4 IC 745, on which reliance was placed on behalf of the appellants, is of no assistance to them, inasmuch as the suit in which the above decision was given was of a description to which Section 153, Ben. Ten. Act, would have no application. This has been clearly pointed out 'by the learned Judge of this Court deciding Beni Madhab's case AIR 1926 Cal 1182, to which reference has been made above. In the result, the appeals are held to be not maintainable, and are dismissed with costs. One hearing fee is allowed in the three appeals.