

Moydhannessa Bibi and anr. Vs. Satis Chandra Giri and anr.

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Court : Kolkata

Decided On : Jun-16-1922

Reported in : AIR1923Cal435,70Ind.Cas.895

Judge : Asutosh Mookerjee and; Chotzner, JJ.

Appellant : Moydhannessa Bibi and anr.

Respondent : Satis Chandra Giri and anr.

Judgement :

Asutosh Mookerjee, J.

1. This is an appeal by the plaintiffs in a suit for a declaration that a solenama entered into between the second plaintiff and the defendant, and the decree for rent based thereon, were fraudulent and illegal. The defendant claimed rent at the rate of Rs. 40-13 which was entered in a petition of compromise and which was filed before the Revenue Officer on the 1st March 1910. The plaintiffs contended that the rent was payable at the rate of Rs. 28 which is entered as the fair and equitable rent in the finally published Record of Rights. The Court of first instance decided in favour of the plaintiffs. The lower Appellate Court reversed that decision. On second appeal to this Court the case was remanded for further consideration. After remand, the Subordinate Judge has adhered to his previous decision. We have consequently to consider whether the rent is payable at the rate of Rs. 40-13, as claimed by the defendant, or at the rate of Rs. 28, as claimed by

the plaintiff.

2. The case for the defendant is, that this compromise cannot be impeached, as it was considered by a Revenue Officer especially empowered under Section 109C, Bengal Tenancy Act, who was satisfied that the rent agreed upon was fair and equitable. If the defendant is able to establish this allegation, he is entitled to succeed. But this raises a question of, the true scope and import of Sections 109B and 109C of the Bengal Tenancy Act.

3. It is well-known that before these sections were enacted, it had been ruled in: Sheo Sahoy v. Ram Rashia Roy 18 C. 333 : 9 Ind. Dec. (N.S.) 223 and Nath Singh v. Damri Singh 28 C. 90; which were applied in Kedar Nath Hazra v. Manindra Chandra Nandi 5 Ind. Cas. 301 : 11 C.L.J. 106 and Bala Mandal v. Manindra Chandra Nandi 25 Ind. Ind. Cas. 829 : 21 C.L.J. 325 : 16 C.W.N. 321 that an agreement for variation of rent might be held valid, even though it was in contravention of the provisions of Section 29, Bengal Tenancy Act, if it was established that such agreement was for the purpose of settlement of some bona fide dispute. This allowed the landlord to evade the provisions of Section 29, Bengal Tenancy Act. The result was that Sections 109B and 109C were introduced into the Bengal Tenancy Act.

4. Section 109B empowers the Revenue Officer to test the agreement or compromise made or entered into by every landlord and his tenant, and he is enjoined not to give effect to any agreement or compromise, the terms of which, if they were embodied in a contract, could not be enforced under the Act. He is further empowered to hold an enquiry, whether the effect of the new agreement or compromise would be to enhance the rent in a manner or to an extent not allowed by Section 29 in the case of a contract. As a set off against this provision, Section 109G was introduced, and a Revenue Officer, especially empowered in this behalf, was authorised to settle rents on agreement, if he was satisfied that the rent agreed upon was fair and equitable, even if such rent might be in contravention of Section 29, Bengal Tenancy Act.

5. It is consequently necessary that, in every case, where the provisions of Section 109C are invoked, there should be a strict compliance with its requirements. That

section provides as follows: 'Notwithstanding anything contained in Section 109B, if, in any case while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding, a Revenue Officer especially empowered in this behalf by the local Government, may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act.' Consequently, the Settlement Officer has to determine, in the first place, whether the terms of the agreement are really such that if they were embodied in a contract, they would not be enforced under this Act. If the conclusion is in the affirmative, he is to satisfy himself that the rent agreed upon is fair and equitable. It is only in the event of his being so satisfied, but not otherwise, that he can settle such rent as fair and equitable rent.

6. In the case before us the Revenue Officer did not comply with the requirements of Section 109C. His order is in these terms; 'The tenant agrees. Though the increase is rather large, the attested compromised feat may be settled as fair and equitable, Section 109C does not contemplate settlement of fair and equitable rent on the basis of such an ambiguous order and in accordance with a contract which contravenes the provisions of the Bengal Tenancy Act. There is the further significant fact that effect was not given to this order, and when the record was finally published, an entry was made therein that fair and equitable rent was Rs. 28 and not Rs. 40-13. The defendant has put forward the theory that this was due to inadvertence on the part of some officer in the Revenue Department. There is no foundation for this contention, for although the case was remanded and an opportunity was given to the defendant to adduce evidence, he has not availed himself of this opportunity. On the record, as it stands, it is impossible for us to hold that the agreement which was in contravention of Section 29, Bengal Tenancy Act, was accepted by the Revenue Officer under Section 109C because he was satisfied that the rent agreed upon was fair and equitable. In these circumstances, we must hold that the defendant is not entitled to claim rent on the basis of the compromise.

7. The result is, that this appeal is allowed, the decree of the Subordinate Judge set aside and the suit decreed on the basis that rent is payable at the rate of Rs. 28. The plaintiffs-appellants are entitled to their costs in all the Courts.

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