

Jnanendrakumar Ray and ors. Vs. Dileepkumar Ray and ors.

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Court : Kolkata

Decided On : Jun-17-1932

Reported in : AIR1933Cal391

Appellant : Jnanendrakumar Ray and ors.

Respondent : Dileepkumar Ray and ors.

Judgement :

Guha, J.

1. This appeal is directed against decision of the learned District Judge, 24 Parganas, passed on appeal in suit for rent and cesses in which a claim for damages was also made. The plaintiffs in the suit claimed rent for the years 1325 to 1328 B.S., on the footing that the annual rent payable by the tenant defendant was Rs. 728-4-7i gandas, and this was on the allegation that the tenant was holding as part of his tenure an area of land for which he was not paying rent. The definite allegation made was that the defendant was in possession of 1,398 odd bighas of land while he was paying Rs. 533-5-6 gandas as rent for only 1,000 bighas. The original rent payable in respect of the tenure, it may be mentioned, was Rs. 326-5-7 gandas for an area of 576 odd bighas land. The Courts below have agreed in passing decrees in favour of the plaintiffs for arrears of rent at the rate mentioned by the plaintiffs, negating the defence of the tenant defendant, which mainly related to this, that the plaintiffs were not entitled to the additional

rent as claimed in the suit.

2. In the decree of the trial Court, an amount was mentioned as damages decreed in favour of the plaintiffs, although the judgment of that Court contained no decision or direction so far as payment of damages was concerned. The learned District Judge, on appeal, has reversed the decree of the trial Court and has held that the plaintiffs 'will not get the damages' as mentioned in the decree of the trial Court. This appeal, by the plaintiffs in the suit relates to the question that, after the decision of the Court of appeal below disallowing damages, it was incumbent upon that Court to allow the plaintiffs interest on the arrears of rent, although no interest was, in point of fact, claimed in the suit.

3. The argument in this behalf was based upon the provision contained in Section 67, Ben. Ten. Act; and it was contended on behalf of the appellants that the Court below has altogether overlooked Section 67, which enacts that 'an arrear of rent shall bear simple interest at the rate of 12 per cent per annum.' Reliance has been placed on certain observations contained in the judgment of Rampini, Ag. C.J., in the case of *Kripa, Sindhu Mukerjee v. Annada Sundari* (1907) 35 Cal 34 decided by a Full Bench of this Court, to the effect that

Section 67, Ben. Ten. Act, made a great change in the law. Under Section 21, Act 8 of 1809, an arrear of rent was only 'liable to interest.' This gave the Court a discretion to award interest or not, as it thought fit. No such discretion is allowed by Section 67.

4. In the arguments advanced on behalf of the appellants, no importance or significance is attached to the words of the section that follow those quoted above namely:

from the expiration of that quarter of the agricultural year in which the instalments fall due to the date of payment or of the institution of the suit, whichever date is earlier,

and the position is entirely ignored that Sections 54 to 67, Ben. Ten. Act, lay down a special law as to contracts between landlord and tenant, and indicate that the

tenant could not be relieved from his liability to pay interest on arrears, unless either the amount is paid to the landlord, who is bound to grant receipt for the same, or unless a receipt is granted by the Court in which a deposit is made under Section 62, of the Act: (see the judgment of Mitra, J., in the case decided by the Full Bench referred to above). The change in the previous law cannot be disputed, but the liability to pay interest arises and the power of the Court to award interest as mentioned in Section 67 is to be exercised in the manner indicated in the provisions of the law to which reference has been made above. It may be noticed that, according to the observations of their Lordships of the Judicial Committee of the Privy Council in the case of Hemanta Kumari Debi v. Jagadindra Nath Roy (1894) 22 Cal 214, the provision in Section 67 'only applies to cases where the rent is payable quarterly.' In the above view of the question arising for consideration, Section 67, Ben. Ten. Act, cannot possibly support the contention that there was no option or any discretion left in the Court, in the matter of awarding interest in a case like the present, even though, as has been noticed above there was no claim for interest made by the plaintiffs in the suit. Furthermore, regard being had to the fact that the plaintiffs' claim for rent in the suit was not at the rate admitted by the tenant, additional rent having been claimed for the excess and the tenant, who set up a case of consolidated rent settled by the document creating tenure, the question of awarding interest on arrears of rent, either under the general law or under Section 67, Ben. Ten. Act, could not arise, until the rent payable by the tenant had been determined as it was determined in the case before us, by the decision of the Court below, an appeal against which has been dismissed by this Court. Where the rate of rent payable by the tenant is required to be fixed by the Court, the plaintiff is not entitled to interest or damages on the ground that the tenant did not pay rent at the rate claimed by the landlord.

5. The rent of the tenant was undetermined till decision was given by this Court; and he was not liable for interest on arrears of rent: see in this connexion the cases of Golam AM v. Gopal Loll Tagore (1864) 1 WR 56, Sumeera Khatoon v. Gopal Loll Tagora (1864) 1 WR 58 and Raj Mohun Neogee Anund Chunder Chowdhry (1868) 10 WR 166. There was, in point of fact, no claim for interest on arrears of rent made by the plaintiffs in the suit. Such claim was not maintainable

under Section 67, Ben. Ten. Act. No interest could also be claimed, nor any allowed by the Court, in view of the fact that the rate of rent was not ascertained or determined till the decision of the Court of appeal below, and the dismissal of the appeal against that decision. Interest could only be awarded on arrears of rent, at the rate finally determined. There could therefore be no claim and there was, in point of fact none in the case before us. On all these grounds, the contention urged in the appeal that the Court of appeal below had no option or discretion in the matter of awarding interest on rent decreed in favour of the plaintiffs in the suit is, in our judgment, wholly untenable and must be overruled. In the result the appeal fails, and is dismissed with costs.

M.C. Ghose, J.

1. I agree.

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