

Joy Kumar Deb Vs. JamiraddIn and anr.

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SooperKanoon Citation : sooperkanoon.com/878302

Court : Kolkata

Decided On : Aug-22-1933

Reported in : AIR1934Cal307

Appellant : Joy Kumar Deb

Respondent : JamiraddIn and anr.

Judgement :

Jack, J.

1. This appeal has arisen out of a suit for ejectment of the defendant under-raiyats after notice to quit Under Section 49(b), Ben. Ten. Act of 1885. Notice was served on them on 10th April 1928 (viz. before the end of Chaitra 1334 B. S.) requiring the defendants to leave the land by the end of Chaitra 1335 B. S. Before this period expired, from February 1929 the amended Tanancy Act came into force. Admittedly if it applies the under-raiyats are not liable to ejectment, whereas if the old Act fact that the defendants were still under-raiyats after the new Act came into force, and therefore it is claimed that their rights as under-raiyats are determined by the provisions of the amended Act. This view however fails entirely to take account of the fact that immediately on service of notice Under Section 49(b) of the old Act a right to eject the tenants on and after the end of Chaitra 1335 vested in the landlord, and unless the provisions of the new Act as to ejectment after notice contained in Section 48(c) of the Act are retrospective, they could not affect

the right which had vested in the landlord on service of notice Under Section 49(b) of the old Act.

2. There is no indication in the Act that the legislature intended this provision to be retrospective and Under Section 6, Clauses (b) and (c) General Clauses Act of 1897, it would not therefore affect the right which had vested in the landlord under the provisions of Section 49(b) of the Act of 1885 to eject the defendants after the expiry of Chaitra 1335. Nothing in this case appears to turn upon the form of notice since it happens that the notice, which was given definitely prescribed a time within which the under-raiyats were to leave the land, and , in any case, though there is a slight difference in the form, there is no difference in the meaning of a notice under the old and under the new Act; in both cases the notice is one terminating the tenancy at the end of the following agricultural year. The learned advocate for the respondents maintains that the decision of the Special Bench case of Jiban Krishna Chakrabarty v. Abdul Kader Chowdhury AIR 1933 Cal 435 was made to depend on the difference in the form of notice under the two Acts; that may be so though, at the conclusion of the judgment, His Lordship the Chief Justice states that

whatever the form of notice which was actually given by the plaintiff to the defendant, the amending Act does not affect the rights of the parties.

3. In any case I would prefer to base my decision as did Mitter, J., in that case on the fact that the new Act cannot interfere with the vested interest of the landlord. It follows that the defendants are liable to ejectment. This appeal is therefore allowed and the suit is decreed. The plaintiff will get possession of the land in suit from which the defendant will be ejected. The plaintiff will get his costs in this Court with interest at 6 per cent. per annum.

Nag, J.

4. I agree.