

Mansar Ali Vs. Abdul Karim

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Court : Kolkata

Decided On : Apr-16-1909

Reported in : 1Ind.Cas.753

Judge : Sharfuddin and ;Coxe, JJ.

Appellant : Mansar Ali

Respondent : Abdul Karim

Judgement :

1. The facts of the suit out of which this appeal arises are that the decree-holder obtained a rent decree against the judgment-debtor for the period of 1309 to 1312. His prayer for ejectment under Section 66 of the Bengal Tenancy Act on account of the arrears of 1312 was refused by the Munsif, but was granted by the District Judge on the 7th July 1907. On the decree-holder taking out execution the judgment-debtor made an objection to the effect that the decree-holder could not enforce the order of ejectment. Both the Courts below have allowed the objection and hence the present appeal by the decree-holder to this Court.

2. The ejectment decree, which was sought to be executed, was in respect of rent for 1312 and was passed as already observed by the appellate Court on the 10th July 1907. It appears, however, that on the 6th September 1907 the decree-holder brought another suit against the judgment-debtor for the rent of 1313 which year terminated in the month of April 1907. He obtained a decree on the 22nd January

1908.

3. It is contended on behalf of the appellant that by bringing the subsequent suit the decree-holder must be held to have treated the judgment-debtor as his tenant for 1313, and to have waived his right under the previous ejectment decree. In support of the above contention we have been referred to the case of Jogeshuri Chowdhrair v. Mahomed Ebrahim 14 C. 33, on which both the Courts below have relied. The facts of the case quoted are distinguishable from the facts of the present case. In the reported case the rent claimed was for the year 1290 and for a portion of the rent of 1291. The plaintiff in that suit also prayed for ejectment. It was held that the landlord, having brought a suit for arrears of rent for the succeeding year also against the tenant before ejecting him, could not claim in the same suit ejectment in the middle of the year. No such question arises in the present case, because we find that the decree-holder's first suit was for the period of 1309 to 1312 and it was for the non-payment of the rent for the whole year 1312 that the judgment-debtor was ordered to be ejected. The rent claimed in the subsequent suit by the decree-holder was for a period before the decree in question, the rent claimed being for 1313 which terminated in April 1907, while the ejectment decree which was refused by the Munsif but granted by the District Judge was passed on the 7th July 1907. The ejectment order having been passed on the 10th, July 1907, the decree-holder, we think, was entitled to bring a suit for the arrears of the period prior to the ejectment decree, and by such conduct ought not to be regarded as having waived the rights that he had obtained under the ejectment decree. The relation of landlord and tenant does not terminate by the institution of a suit for ejectment. It continues till the decree is passed or even later. So long as it continues the landlord has no option in the matter of recognising the tenancy, which subsists as a matter of fact whether he recognises it or not. That being so, it is difficult to see why a landlord who sues for rent justly due to him which accrued before he was in a position to eject the tenant should be regarded as waiving the right of ejectment for previous arrears which he may have obtained by a previous decree. In the authority quoted above the learned Judges followed the case of Peer Bux v. Mowzah Ally 1 Hay 89; W.R.F.B. 10; 1 Ind, Jur. O.S. 7; Marsh. 25. In that case it was held that the plaintiff, who had distrained for the arrears of 1268 and recovered a portion of the rent for that year, could not sue for

ejectment on account of the arrears of 1267. But in the present case both the suits were for the recovery of rent for full years and not for a portion only.

4. Under the above circumstances we think that the judgment of the lower Court ought to be reversed. We, therefore, decree the appeal and direct that the execution do proceed.

5. The appellant is entitled to his costs in all the Courts. We assess the hearing fee in this Court at two gold mohurs.

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