

**SUPREME COURT OF INDIA**

Rama Shankar Singh

Vs.

Shyamlata Devi

C.A.No.23 of 1966

(S. M. Sikri and R. S. Bachawat, JJ.)

10.10.1968

**JUDGEMENT**

**BACHAWAT, J.:-**

1. The plaintiffs, defendants 5 to 7 and the ancestor of defendants 8 to 13 were the sixteen anna proprietors of certain villages in district Shahbad By a registered deed dated October 3, 1944 they leased the forest rights in the villages to the defendants 1 and 2 for a period of 9 years ending Bhado 30, 1360 Fasli corresponding to September 2, 1953 at an annual rent of Rs. 16000/-. The plaintiffs had 6 annas share in the proprietary rights in the villages and Rs. 6000/- was fixed as their share of the annual rent. The defendant No. 3 was a transferee of a portion of lessees' interest from defendant 1. On September 3, 1954 the plaintiff instituted a suit claiming a decree against defendants 1 and 2 for Rs. 36,405/- on account of their share of the rent for 1356 to 1360 Faslis and interest thereon at 1 per cent per annum. During the pendency of the suit, defendant 2 died and his heirs were substituted as defendants 2 and 2 (a). The Trial Court decreed the suit on contest against defendants 2 and 2 (a) and ex parte against defendants 1 and 3 with future interest and costs. On appeal, the High Court held that (1) as defendant 2 had only 4 anna share in the lessees' interest as mentioned in the lease deed and as he had acquired another one anna share in the lessees' interest subsequently, defendants 2 and 2 (a) were liable to pay only 5 annas share in the annual rent, that is to say, Rs. 1875/- per

annum and defendants 1 and 3 were liable to pay the balance rent; (2) that as the lease deed granted a lease of forest rights, the suit was governed by Article 2 (b) (i) of Schedule III of the Bihar Tenancy Act, 1885 and consequently the suit in respect of rent for 1356 and 1357 Faslis was barred by limitation, and (3) in view of Section 67 of the Bihar Tenancy Act the plaintiffs could claim interest at the rate of 6 1/4 per cent per annum only. Accordingly the High Court allowed the appeal in part and passed a decree against defendants 2 and 2 (a) for 5 annas share of the rent for 1358 to 1360 Faslis and a separate decree against defendants 1 and 3 for the balance rent for those years with interest at 6 1/4 per cent per annum. The plaintiffs have filed the present appeal after obtaining a certificate from the High Court. The appellants challenge the correctness of all the findings of the High Court.

2. Clause 3 of the lease deed provided:

" that the lessees shall pay an annual Zama of Rs. 16,000/- in respect of the thika property on 1st Kuar of every year. If for any reason, the rent for two consecutive years shall fall into arrears, in that case the lessors shall be competent to enter khas possession and occupation of the thika property and to this the lessors (?) shall have no objection and in case of making default the lessees shall pay an interest at the rate of Re. 1/- per cent till the date of payment. The lessors either separately or jointly shall realise (the amount) to the extent of their respective shares according to their choice by instituting (sic) in Court with interest thereon mentioned above from the persons and properties of the lessees."

At the end of the lease it was stated that defendant 1 had twelve anna share in the lessees' interest and his share of the rent was Rs. 12,000/-. It was also stated that defendant 2 had 4 anna share in the lessees' interest and his share of the rent was Rs. 4,000/-. Clause 3 of the deed clearly shows that the lessees were jointly liable to pay the annual rent of Rs. 16,000/-. The deed mentioned the share of each lessee and the annual rent for the purpose of indicating what amount would be contributed by each of them towards the rent jointly payable by them. The joint liability of the lessees is clearly indicated by the provision that the entire lease would be terminable on default of payment of rent for two consecutive years. Having regard to Section 43 of the Indian Contract' Act, 1872 defendants 1 and 2 were jointly and severally liable to pay the rent. It was not disputed before the High Court that the liability of defendant 3 stood on the same footing. The High Court was in error in holding that defendant 2 was liable to pay only 5 anna share in the rent.

3. The High Court was right in allowing the defendant to raise the point of limitation, though the plea was not taken in the written statement. Under Section 184 of the Bihar Tenancy Act a suit instituted after the expiry of the period of limitation has not been pleaded. Learned Counsel for the appellants could not tell us what further evidence his clients could adduce on this point. In the circumstances, the absence of the plea of limitation in the written statement did not cause the appellants any prejudice.

4. On a careful reading of the lease deed, we are satisfied that it granted a lease in respect of forest rights only. It gave the lessees the right to cut and appropriate trees of certain types and the fruits and flowers of certain fruit bearing trees. The right to open roads and to construct buildings were incidental to the right to enjoy the forest produce. The suit is for recovery of rent in respect of forest produce and having regard to Sec. 193 of the Bihar Tenancy Act is governed by Articles 2 (b) (i) of the Schedule III thereto. This view is supported by the decisions of the Calcutta High Court in *Abdulullah v. Asraf Ali* (1908) 7 Cal LJ 152 and *Bande Ali Fakir v. Amud Sarkar* 19 Cal WM 415 = (AIR 1915 Cal 135). The special period of limitation applies though the claim for arrears of rent is founded on a registered instrument, (see *Mackenzie v. Haji Syed Muhammad Ali Khan*, (1892) ILR 19 Cal 1 (FB)). The High Court was right in holding that the suit in respect of rent for Fasli years 1356 and 1357 was barred by limitation.

5. Having regard to Section 193 all the provisions of the Act applied to a suit. Section 67 (1) provides that arrears of rent shall bear simple interest at the rate of 6 1/4% per annum. The section overrides the contractual stipulation that the interest would be payable at 1% per annum. The High Court was right in holding that interest was payable at the rate of 6 1/4 per cent per annum only.

6. In the result, the appeal is allowed in part and it is declared that defendants 1, 2, 2 (a) and 3 are jointly and severally liable to pay to the plaintiffs Rs. 6,000/- per annum on account of the plaintiffs share of rent for Fasli years 1358, 1359 and 1360 and simple interest thereon at the rate of 6 1/4% per annum up to date. We direct that a decree be drawn up accordingly. The decree will carry future interest on the principal sum at the rate of 6 per cent per annum. The aforesaid defendants will pay to the plaintiffs proportionate costs of the suit in the Trial Court. The parties will bear their own costs of the appeal in the High Court and in this Court. This decree will be without prejudice to the payments, if any, made by the defendants to the plaintiffs after the institution of the suit.

Appeal partly allowed.