

(1888) 09 CAL CK 0001
In the Calcutta High Court

Abdur Rahim and Others

APPELLANT

Vs

Debiruddi and Others

RESPONDENT

Date of Decision : 03-09-1888

Acts Referred:

Bengal Tenancy Act, 1885 — Section 178

Citation : (1890) ILR (Cal) 196

Hon'ble Judges : Wilson, J; Rampini, J

Bench : Division Bench

Judgement

Wilson, J.—The present suit was brought by persons who claimed to be the landlords of the defendants, and they claimed to eject the defendants from the land in question on several grounds of which it is only necessary to notice the first.

2. The first ground was that in a former suit between the same parties, in which the plaintiffs sued to recover rent, the defendants in their written statement had denied that the relation of landlord and tenant existed at all between the plaintiffs and themselves, and setup an adverse title claiming the land as their own lakhiraj. That was decided against the defendants, it being established that the relation of landlord and tenant did exist; and a decree for rent was given accordingly. In the present suit for ejectment the plaintiffs based their title in the first place upon the forfeiture of the defendants' interest, which they (the plaintiffs) say arose from the fact of the defendants having absolutely denied their landlords' title in the rent-suit. Under the law as laid down in this Court before the passing of the Bengal Tenancy Act, it must be taken, we think, that the plaintiff's contention is correct, and that such a denial in the written statement of the landlords' title did work a forfeiture. The cases are many, and have not all been uniform, but the latter cases are, we think, all one way in favour of the plaintiff's view. It is not necessary to do more than refer to two of those cases: one, Sutyabhama Dassee v. Krishna Chunder Chatterjee ILR Cal. 55 and the other, Ishan Chunder Chattopadhyaya v. Shama Chum Dutt f.

3. The denial in the rent-suit took place sometime in March 1885. In the same year the Bengal Tenancy Act was passed and came into operation on the 1st of November of that year. That Act has obviously made a material change in the law in this respect. The mode in which it has dealt with the subject of eviction of tenants from their tenures or holdings is to enumerate the things which shall be grounds for a suit for eviction, and, in express terms, to exclude every other ground. Various classes of tenants are dealt with in their order.

4. Section 10 deals with permanent tenure-holders, and it declares that "a holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected. Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act." Section 18 deals with the case of a ryot holding at a fixed rent in perpetuity, and it says that he "shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected." The case of the occupancy ryot is dealt with in Section 25, which says: "An occupancy ryot shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground; (a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy; or (b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected." The next case, that of a non-occupancy ryot, is dealt with in Section 44, which says: "A non-occupancy ryot shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely: (a) on the ground that he has failed to pay an arrear of rent; (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected; (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired; id) on the ground that he has refused to agree to pay a fair and equitable rent determined u/s 46, or that the term for which he is entitled to hold at such a rent has expired." The remaining class of tenants, under-ryots, are provided for in Section 49, which says: "An under-ryot shall not be liable to be ejected by his landlord except (a) on the expiration of the term of a, written lease; (b) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which notice to quit is served upon him by his landlord." Then Section 89 provides that no tenant shall be evicted from his tenure or holding except in execution of a decree, so that a landlord, even in case where eviction is allowed, cannot evict without obtaining; a decree of a Court for that purpose. And Section 178 strengthens the matter, because it provides that "nothing in any contract

between a landlord and tenant made before or after the passing of this Act...shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act." Thus it seems clear that under the present Rent Law in all the cases to which it applies there can no longer be any eviction on the ground of forfeiture incurred by denying the title of the landlord.

5. If the present case is governed then by the law in force prior to the Bengal Tenancy Act, the plaintiff is entitled to rely on the forfeiture; if it is governed by the Bengal Tenancy Act, he is not. The general principle of construction applicable to such matters is that an Act is not to be held to take away vested right of property unless such an intention is expressed or appears by necessary implication. In the Tenancy Act we can find no indication of an intention that it shall take away from a landlord any vested right derived from a forfeiture which occurred before the Act came into operation. Section 178 is specifically made retrospective in one respect, for it says, that nothing in any contract between a landlord and a tenant made before or after the passing of this Act (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act." But the present case does not depend on contract, and, if it did, there is a great difference between a forfeiture under a contract made before the Act, and a forfeiture actually completed before the Act.

6. For these reasons, we think that the old law governs this case. The appeal is dismissed with costs.