

(1912) 01 CAL CK 0005
In the Calcutta High Court

Annada Prosad Chakravarti and Another	APPELLANT
Vs	
Sham Sundar Adhikari and Others	RESPONDENT

Date of Decision : 22-01-1912

Acts Referred:

Citation : 13 Ind. Cas. 688

Hon'ble Judges : Coxe, J

Bench : Single Bench

Judgement

Coxe, J.—This was a suit for recovery of possession of certain land. It appears that, the plaintiff brought a suit, for rent against the defendant No. 1. The defendant No. 1 denied the relationship of landlord and tenant and that question was specifically put in issue and decided in the negative. The plaintiff then brought this suit which was decreed by the Munsif. On appeal, the learned District Judge held that the defendant was the plaintiff's tenant and that, the plaintiff, therefore, was entitled to succeed but was not entitled to get possession of the land but only to get rent.

2. The plaintiff appeals to this Court; and the cases of Khater Mistri v. Sadruddi Khan 34 C. 922; Sheikh Miadhar v. Rajani Kunta Roy 14 C.W.N. 339 : 5 Ind. Cas. 708 and Ekabbar Sheikh v. Hara Bewah 15 C.W.N. 335 : 8 Ind. Cas. 660 : 13 C.L.J. 1 have been cited on his behalf. These cases appear to me to apply precisely to the facts of the present case and the plaintiff is entitled to succeed.

3. On the other hand, the case of Srimnti Mullika Dassi v. Makhan Lal Chowdhry 9 C.W.N. 928 has been relied on. That case, however, has not been followed in the three cases, which I have cited, though it is mentioned in every one of them. I am not at all disposed to deny that a tenant does not forfeit his tenancy under the Bengal Tenancy Act by denying the rights of his landlord, but this does not affect the operation of the rule of res judicata. If it has been held by a competent Court, as it has been held in this case, that no relationship of landlord and tenant exists between the plaintiff and the defendant, it is not open to a Court, in a subsequent suit, to go into that question at all, whether it has been rightly or

wrongly decided by the first Court. I should have been inclined to think that in that case the plaintiff would be bound to prove possession within 12 years, and that the finding of the Courts below that the defendant's possession had not been adverse until the former rent-suit was hardly sufficient for the decision of the case. But the case of *Khatar Mistri v. Sadruddi Khan* 34 C. 922 which I have cited, seems exactly applicable to the facts of the present case ; and, that being so, I cannot interfere in the second appeal with the decision of the Court below on the question of limitation. In that case, it was held that the defendant, while he was in possession of the land, had not repudiated the relationship of landlord and tenant until the institution of the rent-suit and that, consequently, his possession had not been adverse.

4. The result is that the appeal must be allowed. The plaintiff will be entitled to khas possession of the land in suit with mesne profits which will be ascertained hereafter. The plaintiff will be entitled to his costs in all Courts.