

(1887) 01 CAL CK 0001
In the Calcutta High Court

Anund Chunder Sen Mozumdar

APPELLANT

Vs

Doya Chand Shaha

RESPONDENT

Date of Decision : 07-01-1887

Acts Referred:

Citation : (1887) ILR (Cal) 382

Hon'ble Judges : Prinsep, J;Beverley, J

Bench : Division Bench

Judgement

Prinsep and Beverley, JJ.—The plaintiff sues to recover khas possession of certain lands now in the occupation of defendant No. 1. He states that the other defendants were his tenants, and that defendant No. 1 has purchased in execution of a decree the rights of those tenants which were not transferable. The sole question on which the case was tried by both the lower Courts and which is now argued before us is on whom the onus, under such circumstances, would lie, whether it is for the defendant to prove that he acquired the right to hold the land inasmuch as the tenure was a transferable tenure, or whether the plaintiff is not bound to start his case by showing that the tenancy of defendants 2, 3 and 4 was not transferable, and that consequently he had a right to re-enter on their relinquishing the land in favour of defendant No. 1. In the course of the argument some cases have been cited from the Weekly Reporter, but it is impossible for us to apply the law laid down in those cases because in none of them are the facts stated. We are of opinion that the case of Dwarka Nath Misser v. Hurish Chunder 4 C. 925 is not applicable. In that case it was admitted or found that the defendants had occupancy rights, and the learned Judges of this Court in their judgment proceeding on the Full Bench case, Narendra Narain Roy v. Ishan Chundra Sen 13 BLR 274 held that it was for the defendant to prove that such right was transferable. There is nothing in that case to establish the proposition now contended for, that it is for the tenant or the person who claims to be the tenant to establish his rights to retain the lands in any suit brought against him by the zemindar or whenever the zemindar may think proper to call upon him to show his title. In our opinion the plaintiff is bound to start his case.

There is no presumption that any tenure held is not a transferable tenure. We therefore affirm the judgment of the first Court and set aside that of the lower appellate Court, the suit being dismissed with costs throughout.