
(1909) 07 CAL CK 0009
In the Calcutta High Court

Babua Das

APPELLANT

Vs

Abdul Majid Chowdhury Khan Bahadur and Others

RESPONDENT

Date of Decision : 09-07-1909

Acts Referred:

Citation : (1909) 07 CAL CK 0009

Judgement

Chitty, J.—These eight appeals arise out of as, many suits brought by the landlord for ejectment? against the several principal defendants, the allegation being that the pro forma defendants in each case have transferred their holding improperly to the principal defendants. The learned Subordinate Judge has, in one case, found that there has been a recognition of the defendant's right and that suit has been dismissed and it is not before this Court. As regards the other eight cases, in three, decrees have been passed for khas possession against the principal defendants only with costs, it having been found that the pro forma defendants are in a sense in possession of the lands apparently under an alleged settlement from the principal defendants after the transfer. In the other five cases, the plaintiff's suits for khas possession have been decreed with costs. These appeals have been preferred to this Court by the principal defendants.

2. The first point that has been raised is that the suit being under the Bengal Tenancy Act Section 106 the presumption afforded by Section 50 must be applied in favour of the defendants. The short answer to that is that the suits are not under that Act, and that the presumption cannot be extended. For this there is clear authority in this Court in the cases of Rasamoy Purkait v. Srinath Moyra 7 C.W.N. 132; Sarat Chandra Ghose v. Shyam Chand Sinha 10 C.W.N. 930 and Mohabir Prasad v. Charles Fox 9 C.L.J. 467 : 1 Ind. Cas. 112. That point appears to me, therefore, to be concluded by authorities, and the remarks of the late Chief Justice in the case of Dinonath Ghose v. Nobin Chunder Ghose 6 C.W.N. 181 which are, it may be observed, obiter dicta in that case, are not sufficient to disturb that line of authorities.

3. The next question that is raised relates to the custom of transferability, as to

which evidence was taken in these cases. It is said that the custom which the learned Subordinate Judge has found to be proved, namely, that the transfer cannot be made without the consent of the landlord and without payment of nazar to him is not a good finding. As to the question of fact, I cannot go behind the conclusion at which the learned Subordinate Judge has arrived and such a conclusion is equivalent to saying that a transfer under such circumstances is invalid. It is supported by the cases of *Srimutty Sibbo Sundari Ghose v. Raj Mohun Guho* 8 C.W.N. 214; *Maharaja Radha Kishore Manikya Bahadur v. Sreemutty Ananda Pria* 8 C.W.N. 235. These are distinct authorities for saying that where it is found that the raiyats are only entitled to transfer on payment of a certain nazarana to the landlord, the transfer without the landlord's consent and without such payment is clearly invalid.

4. As to the form of the decrees which have been passed in these cases where the pro forma defendants are still retaining same semblance of possession it appears to me that it is perfectly correct. If the principal defendants do not actively assert possession it will not be necessary to execute the decrees against them. If, however, they claim to possess the lands otherwise than as licensees of the pro forma defendants, they will be liable to be ejected in execution of those decrees.

5. The appeals must, therefore, I think, be dismissed with costs.