
(1916) 05 CAL CK 0057
In the Calcutta High Court

Bangshi Badan Biswas and Another

APPELLANT

Vs

Kamala Kanta Porohit

RESPONDENT

Date of Decision : 24-05-1916

Acts Referred:

Land Registration Act, 1876 — Section 78

Citation : 41 Ind. Cas. 477

Hon'ble Judges : Lancelot Sanderson, C.J.; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—In my judgment this appeal must be dismissed. The question is whether the plaintiffs' suit is barred by the provisions of Section 78 of the Land Registration Act. The learned Munsif seems to have thought that this was an attempt on the part of the plaintiffs to get over the provisions of Section 78 of the Land Registration Act and he thought that the plaintiffs did not succeed in so doing. Now, Section 78 provides that: "No person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act." It appears that a previous suit was brought by the plaintiffs in which they alleged that they were owners of the property, basing their claim upon adverse possession; and, as I understand, they were then met by the provisions of Section 78, and their suit was dismissed. Then they have brought this suit, and in this suit they claim as talukdars under the proprietor; in other words, they allege that they are not proprietors but talukdars under the proprietor, and so they want to get over the difficulty which presented itself in the previous suit, namely, Section 78 of the Land Registration Act. In order to get over that difficulty the plaintiffs had to prove that they were talukdars. That matter was investigated by the Judge of the Court of first instance, who came to the conclusion that they did not prove that they were talukdars, and the result was that he dismissed the suit. Then the matter came before the first Appellate Court, and the learned Judge did not arrive at any

conclusion as to whether the plaintiffs were proprietors and, therefore, were affected by the provisions of Section 78. He did not decide that question at all but based his judgment on the ground that inasmuch as the plaintiffs claimed as talukdars and the defendants had in fact, as he found, paid rent to the plaintiffs, the defendants were estopped from denying that the plaintiffs were the defendants landlords and that rent was due to them. With regard to that matter, all I can say is that is the plaintiffs were in fact proprietors and if Section 78 did apply to them, then the allegation of estoppel based upon the payment of rent could not affect the defendants' right to set up the defence that in spite of the payment of rent, Section 78 would apply to the plaintiff's as proprietors. Therefore, I do not think that the judgment of the first Appellate Court can be sustained.

2. The learned Judge in this Court apparently based his decision upon the defence that appears to be inevitable in most of these cases, namely, *res judicata*. That is the primary ground of his decision. He also found as follows, and I think that this was the true ground, "even, therefore, if my view as to *res judicata* is wrong, the plaintiffs cannot succeed unless they can show in the present suit that they are not proprietors, but talukdars. The Munsif has gone into the evidence in regard to the taluki right and finds that it has not been established. He has dismissed the suit on the merits." The learned Judge relied upon that as the second ground for his judgment. In my opinion the second ground upon which he bases his judgment is the right one, and I think that this appeal should be dismissed with costs.

Mookerjee, J.

3. I agree. It is perfectly plain that the bar prescribed by Section 78 of the Land Registration Act does not cease to be applicable, merely because the plaintiff establishes that the defendant has previously paid rent to him amicably, or because he brought the defendant upon the land. There is really no question of estoppel for the defendant does not dispute the title of the plaintiff; he relies only upon the statutory bar which places the plaintiff under a disability. Clearly, the plaintiff cannot evade the effect of Section 78 of the Land Registration Act by recourse to the doctrine of estoppel.