
(1929) 03 CAL CK 0024
In the Calcutta High Court

Basiraddi

APPELLANT

Vs

Sukh Sagar Saha and Others

RESPONDENT

Date of Decision : 07-03-1929

Acts Referred:

Bengal Tenancy Act, 1885 — Section 85
Specific Relief Act, 1877 — Section 9

Citation : AIR 1929 Cal 384 : 118 Ind. Cas. 852

Hon'ble Judges : Rankin, C.J;C.C. Ghose, J

Bench : Full Bench

Judgement

Rankin, C. J.

1. In this case the plaintiff took an under-raiyati lease from the proforma defendants 5 and 6 whose title is not in dispute. The lease he took purported to be unregistered and therefore it is made invalid by Section 85, Ben. Ten Act. Nevertheless the plaintiff went into possession under it, paid rents to his landlords, made no objection, and in that condition of things in or about 1924 he was dispossessed, according to the findings of fact, by defendants 1 to 4, the defendants 1 to 4 having no shred or pretence of title whatever, they being merely trespassers. The question is whether the plaintiff can recover in ejectment, his suit not being brought u/s 9, Specific Relief Act. It is said that as he cannot prove his title from his landlords by reason of the permanent lease being invalid and not evidence he is liable to be ejected without any remedy by any trespasser apart from Section 9. Specific Relief Act, That seems to me to be an erroneous proposition of law though I quite agree that the theory of this matter is somewhat difficult to reconcile in some of the decided cases. But the case of Kartik Mandal v. Bama Churn Mandal [1916] 20 C.W.N. 182 relied upon by the appellant is a different case. That is a case where a person sought for the first time to get possession of lands granted to him by an invalid lease and was resisted by the defendant when he went to obtain possession. There are however, cases in this Court which show that the Court is not so unreasonable as to permit an under-raiyat to be interfered with by a trespasser apart be altogether

from Section 9, Specific Relief Act, merely because the lease from his landlord is for a longer term than the law permits. This matter has been decided in the case of Beni Madhab v. Raj Chandra Pal [1910] 14 C.W.N. 14 and again in the case of Gour Mandal v. Peari Majhi [1918] 22 C.W.N. 61. We have also been referred to the cases Adhar Chandra Pal v. Dibarkar Bhuyan [1914] 41 Cal. 394 and Shama Charan Roy v. Surja Kanta [1910] 15 C.W.N. 163. It appears to me that these cases are right on principle and that the fact that a person is in possession paying rent to his landlords is a sufficient interest in the property to enable him to recover it against the defendants, the defendants showing no title whatever, still less a better title. In my opinion, this appeal must be dismissed with costs.

C.C. Ghose, J.

2. I agree.