

(1909) 05 CAL CK 0014
In the Calcutta High Court

Beni Madhab Christian and Others

APPELLANT

Vs

Raj Chandra Pal and Another

RESPONDENT

Date of Decision : 24-05-1909

Acts Referred:

Citation : (1909) 05 CAL CK 0014

Judgement

1. The plaintiffs sued for a declaration of their jamai right to certain land, and for possession thereof jointly with defendant No. 11. Both the lower Courts have given the plaintiffs a decree for two-thirds of the land in suit. The legal representative of defendant No. 1, who died since the suit was filed, and defendant No. 6 have preferred this appeal. So far as the appellants are concerned it has been found that they never had any title to the land in dispute and that they were never in possession, until they dispossessed the plaintiffs as now complained of. They must, therefore, be regarded as trespassers. The plaintiffs claimed as sublessees of one Mohim Chandra Mandal, who held the land from the Malik Nobin Chandra Singh Roy under a kabuliat dated 3rd Sarban 1293 (1886). By a registered pattah dated 12th Sarban 1301 (1894) Mohim Chandra Mandal sub-let to the plaintiffs in perpetuity at an annual rent of Rs. 76. The only point that has been urged before us on this appeal is that this pattah under the provisions of Section 85 (2) of the Bengal Tenancy Act, should never have been admitted to registration; that the registration was of no effect; that it was absolutely void; and that inasmuch as the plaintiffs' title rested upon, it, and upon it alone, the plaintiffs must be held to have failed to prove their title, and their suit must be dismissed.

2. It appears to be the fact that Mohim Chandra Mandal was a raiyat, and that the sub-tenancy he purported to create in favour of the plaintiffs was a permanent one. It may be noticed that although these defendants raised this plea in their written statements, it was never referred to in the Court of first instance, nor in the lower appellate Court when the appeal was first before it. It is, however, a pure question of law, and, therefore, might, we think, be urged for the first time in second appeal, though the fact that defendants had not

previously pressed it might be considered in awarding or refusing costs.

3. There have been numerous rulings of this Court with regard to Section 85 of the Bengal Tenancy Act and most of them have been cited to us in this argument. It appears, to us unnecessary to discuss those rulings; for, assuming that the lease to the plaintiffs is void in the sense that it could not law-fully be registered and must be treated as unregistered and consequently incapable of affecting the property referred to in it or being admitted in evidence, we are of opinion that the plaintiffs are nevertheless entitled to a decree against the appellants. It must be remembered that the dispute is not between the plaintiffs and their immediate lessor, nor even between them and the superior landlord. The appellants are, as we have said, mere trespassers upon this land. It is open to a tenant to prove his tenancy aliunde where the lease granted to him is inadmissible for want of registration or otherwise : see *Lala Surabh Narain Lal v. Catherine Sophia* 1 C.W.N. 248 and *Fazel Sheikh v. Keramuddi Sheikh* 6 C.W.N. 916. Here it is abundantly clear from the several judgments of the Courts below that the plaintiffs have been found to have been in possession of this land from 1301 as tenants of Mohim Chandra Mandal and to have paid rent to him for it, while he in his turn paid rent to the superior landlord. The possession of the plaintiffs as such tenants continued until they were ousted by the appellants, and was, for the purposes of this suit, a sufficiently good title against the latter. The immediate lessor of the plaintiffs has raised no objection to their continuing in possession as tenants nor has the superior landlord. The appellants as trespassers cannot withhold possession merely on the ground that the written mukarari lease in the plaintiffs' favour ought not to have been admitted in evidence. A plaintiff in ejectment must, of course, prove his title; but here it was not necessary for the plaintiffs to establish their mukarari lease, for their bare possession was a sufficient title against the appellants. See *Pemraj Bhavaniram v. Narayan Shivram Khisti* 6 B. 215 and the cases there cited. For these reasons we think that the appeal fails, and it is dismissed with costs.