

(1898) 07 CAL CK 0011

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 648 of 1897

Bhagaban Chandra Missri

APPELLANT

Vs

Bissesswari Debya Chowdhurani and Others and Sheikh Ditya
and Sheikh Alfath

RESPONDENT

Date of Decision : 18-07-1898

Acts Referred:

Citation : (1898) 07 CAL CK 0011

Final Decision : Dismissed

Judgement

1. The subject-matter of dispute in this suit forms part of a holding held by one Wazir Shaikh under the Plaintiffs who are Respondents in this Court. Wazir Shaikh appears to have sold a portion of his holding to one Chunder Nath Nic and, according to the Subordinate Judge's finding, Chunder Nath got his jama separated and his name registered in the landlords' sherista. The remaining portion of Wazir's jote was brought to sale by Defendant No. 1 in execution of a decree against Wazir and was purchased by him (Defendant No. 1). It appears that after his purchase, the Defendant No. 1 obtained possession of this piece of land through the Court and pulled down the huts of Wazir standing thereon. The Plaintiffs who are the landlords now sue for khas possession of this portion of the jote of Wazir on the ground that he had only a right of occupancy which was not transferable, and that accordingly Defendant No. 1 had acquired no interest under the execution sale at which he purchased. They further state that they had let out the land to Defendants Nos. 2 and 3, and when these persons attempted to take possession, Bhagaban Chandra Missri, Defendant No. 1, brought a charge of criminal trespass against them, and Defendant No. 2 was convicted and thereupon the Defendants Nos. 2 and 3 gave up the land and the present suit is therefore brought for khas possession. The defence of Defendant No. 1 was that Wazir's right was transferable according to the usage of the locality and that, inasmuch as he was not the purchaser of the entire jote the suit for khas possession was not maintainable.

2. The Munsif found against the allegation of transferability, but he was of opinion that Wazir was still holding this particular jote through his benamidars, Defendants Nos. 2 and 3, and accordingly he dismissed the suit.

3. On appeal by the Plaintiffs, the learned Subordinate Judge, whilst agreeing with the Munsif on the question of transferability, has come to the conclusion that the Defendants Nos. 2 and 3 are not in possession and that Wazir was not in possession through them as his benami-dars. He has held also that Wazir "has in fact become a fakir and has abandoned possession of the land in suit, that Defendant No. 1 took possession by actually removing the judgment-debtor from the land and by pulling down his huts and accordingly he held upon the authority of the case of *Kali Nath Chakraborti v. Kumar Upendra Chandra* 1 C. W. N. p. 163 (1896-97) that the Plaintiffs were entitled to a decree for khas possession.

4. The Defendant No. 1 has appealed specially to this Court, and the main contention on his behalf is this that in as much as he acquired no interest under the execution sale, it must be taken that the interest of Wazir continued in the land and that the Plaintiffs not having taken any steps such as are provided for in sec. 87 of the Bengal Tenancy Act, they are not entitled to obtain a decree for khas possession. It is conceded that if the Defendant No. 1 had acquired this particular piece of holding by voluntary purchase, he would not have been able, upon the rulings of this Court, to resist the action for khas possession, but it is contended that the sale being a sale in invitum, the Defendant is entitled to plead as against the Plaintiffs the right of Wazir and that, before the Plaintiffs can establish a right of possession upon abandonment, they were bound to proceed under sec. 87 of the Bengal Tenancy Act.

5. We are of opinion that the grounds, urged by the learned pleader in this appeal, are not well founded upon the findings arrived at by the Subordinate Judge. Sec. 87 of the Tenancy Act provides for certain steps to be taken by the landlord for his "own protection against any subsequent action on the part of the tenant when there is no person in the actual occupation of the land, in other words, when there has been a voluntary abandonment on the part of the tenant who has left the place without making any provision for the payment of his rent or the cultivation of the land. In that case it is optional with the zemindar to proceed under sec. 87 in order not to be liable in an action on the part of the tenant. But in the present case, the Subordinate Judge finds as a fact that the tenant was turned out by Defendant No. 1 and that the Appellant has pulled down his huts, and has thrown every obstruction in the way of anybody else obtaining possession of the land. We think that, upon the findings, there can be no doubt that Wazir has abandoned his holding and that Defendant No. 1 who admittedly has acquired no interest under his auction purchase has no title to remain on the land. It was suggested that the suit was in respect of a part of the holding and therefore not maintainable. Whatever the finding of the Munsif might have been, the Subordinate Judge has found in several places that Chunder Nath got his jama separated and his name registered and that what

remained to Wazir became a separate and an entire jote. We agree with the Subordinate Judge that this therefore is not a case for khas possession of a portion of the jote and that the Defendant's position is in no way different from that of a person acquiring by voluntary purchase. We accordingly dismiss the appeal with costs.