

(1918) 11 AHC CK 0015
In the Allahabad High Court

Bhola Nathtewari and Others

APPELLANT

Vs

Suraj Bali Rai and Others

RESPONDENT

Date of Decision : 30-11-1918

Acts Referred:

Citation : 49 Ind. Cas. 357

Hon'ble Judges : Henry Richards, C.J;P.C. Banerji, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This appeal arises out of a suit for ejectment brought in the Revenue Court. The plaintiff alleged that the defendant was not an occupancy tenant and, therefore, liable to ejectment. The Court of first instance dismissed the suit. The lower Appellate Court granted a decree. There is a long history attached to the holding. It would appear that at one time at any rate the holding was the holding of an occupancy tenant and the defendant originally got into possession by virtue of an usufructuary mortgage created before the Tenancy Act came into operation. However this may be, an agreement arrived at upon a compromise between the parties in a previous litigation was put in evidence. Under that agreement the plaintiff's predecessor-in-title agreed that the defendant should be considered an occupancy tenant and that he should not be ejected. It has been properly, conceded here that the present plaintiff is in no better position than his vendor would have been who entered into the agreement with the defendant. The learned District Judge considered that the Zemindar could not create an occupancy tenancy and that length of occupation as prescribed in the Tenancy Act alone creates occupancy right. This perhaps may be correct, but it seems to us there is nothing illegal in the landlord agreeing that his tenant should have the rights of an occupancy tenant and amongst others the right not "to be ejected so long as he paid his rent and observed the conditions of his tenancy. We think that under these circumstances the plaintiff was not entitled to eject the defendant: It is, therefore, unnecessary for us to consider the other

questions which arise, namely, whether the plaintiff was entitled to sue without joining the other co-sharers in the khata. We allow the appeal, set aside the decree of the lower Appellate Court and restore the decree of the Court of first instance with costs in all Courts.