

(1891) 11 CAL CK 0002
In the Calcutta High Court

Bhupendro Narain Dutt and Others

APPELLANT

Vs

Debendro Kumar Bundopadhyia and Others

RESPONDENT

Date of Decision : 25-11-1891

Acts Referred:

Citation : (1892) ILR (Cal) 182

Hon'ble Judges : W. Comer Petheram, J; Prinsep, J; Pigot, J; Norris, J; Ghose, J

Bench : Full Bench

Judgement

W. Comer Petheram, Kt., C.J.—We agree with the referring Bench that the present application does not come within the scope of Section 158 of the Tenancy Act, and we think the application should have been rejected, and that the present appeal must be allowed on that ground.

2. Upon the statements contained in the petition as recited in the order of reference, it is, we think, clear that the petitioners assert that no tenancy in fact existed between themselves and the opposite party at and before the date of the petition, and the admission of a tenancy, we think, merely amounts to an expression of willingness on their part that a tenancy should now be treated as existing, in order to give jurisdiction u/s 158, and so to enable them to remove the opposite party from the land. This admission does not, in our opinion, bring the case within the meaning of the section; the object of which is to enable the Court to ascertain what are the incidents of the existing arrangements between a landlord and his tenant, and not to enable the Court in effect to make a new contract for parties between whom no contract was in existence at and before the date of the application. In the present case the petition alleges that the opposite party obtained possession of the land by fraud and still keeps illegal possession of it by force, and has always refused and still refuses to make or acknowledge any arrangement with the owner, except that under which he alleges that he obtained possession, and which the present applicant says was vitiated by fraud. It is true that the fraud charged was only alleged to have been committed with respect to two of the applicants, that fraud has been negatived,

and that the applicants in this proceeding founded their attack on the validity of the appellant's lease, on the allegation that it had been entered into by their mother and guardian without any power in that behalf. But the petition does allege that the whole possession was obtained by fraud. It is evident that if these allegations are true, no binding arrangement existed between the parties with reference to this land, nor was any rent payable by the opposite party to the petitioner in respect of it at the time when the application was made, and although the application was no doubt entitled under the Act and made nominally for the determination of the incidents of a tenancy, it amounts on the face of it to a denial that any real tenancy existed of which the incidents could be ascertained, and that it was not in fact an application for that purpose at all, but was one for the purpose of getting rid of the only contract under which the opposite party claimed any interest in the land.

3. We answer the question referred to us in the negative.

4. The result will be that the appeal must be allowed and the application dismissed with all costs.

Norris, J.

5. If the plaintiff's plaint or application is to be construed in accordance with the terms of the judgment of the Chief Justice, I agree in holding that it is not one that comes within the scope of Section 158 of the Bengal Tenancy Act.

6. What is the true construction of the plaint or application was, I think, a question for the determination of the Division Bench, and I express no opinion upon the point.