

(1889) 01 CAL CK 0006
In the Calcutta High Court

Bussunt Kumari Dasi and Others

APPELLANT

Vs

Gunamoni Nath

RESPONDENT

Date of Decision : 10-01-1889

Acts Referred:

Citation : (1889) ILR (Cal) 415

Hon'ble Judges : Trevelyan, J; O'Kinealy, J

Bench : Division Bench

Judgement

O'Kinealy and Trevelyan, JJ.—In this case the point of law which it is necessary to decide is what is the effect as regards notice of possession of the rents of the property in suit. If it be true that the purchaser is bound without notice of the lessor's title, no doubt the learned Judge in the Court below was wrong. If, on the other hand, it be true, as a proposition of law, that he has only notice of the tenancy, and it is the tenant in actual possession alone who can raise any equity against the purchaser, then the Judge in the Court below was right. The point has been expressly decided by the Privy Council. In the case of *Barnhart v. Greenshields* 9 Moore's P.C. 18 their Lordships, in dealing with this question, say as follows: "In all the cases to which we have referred, it will be observed that the possession relied on was the actual occupation of the land; and that the equity sought to be enforced was on behalf of the party so in possession, There is no authority in these cases for the proposition that notice of a tenancy is notice of the title of the lessor; or that a purchaser neglecting to inquire into the title of the occupier, is affected by any other equities than those which such occupier may insist on."

2. It seems, therefore, to us that the point has already been concluded by authority of the Privy Council. The purchaser was bound, as their Lordships say, with notice of the tenancy, and was liable to any equity which the tenant in occupation could raise against him; but he was not bound by notice of the lessor's title, and he has no equity whatsoever.

3. The result is that this appeal will be dismissed with costs.