

(1926) 05 CAL CK 0016
In the Calcutta High Court

Chandra Mohan Banikya and Others

APPELLANT

Vs

Srimati Meherjan Banu and Others

RESPONDENT

Date of Decision : 17-05-1926

Acts Referred:

Bengal Tenancy Act, 1885 — Section 182, 49

Citation : AIR 1927 Cal 191

Judgement

1. This is an appeal by the plaintiffs arising out of a suit for ejectment of the defendants from lands which are alleged to be held by them as under-raiyats under the plaintiffs. The suit was brought after service of notice to quit u/s 49 of the Bengal Tenancy Act. The lands consist of certain arable lands, a piece of land on which the defendants have got their homestead and certain Bhita lands comprised within certain settlement dags. The trial Court passed a decree in favour of the plaintiffs. On appeal by the defendants, that decree has been modified by dismissing the plaintiffs suit for khas possession of the Bhita lands as well as the land on which the defendant's homestead stands. With regard to the arable lands the decree of the Munsiff has been affirmed. The plaintiffs contend that this decision of the lower appellate Court is erroneous and that they are entitled to khas possession of all the lands in question. The first thing that strikes us with regard to the decision of the District Judge is that he has made a decree for partial ejectment from the lands hold by the under-raiyats u/s 49 of the Bengal Tenancy Act. The reason for his so doing is that Section 182 of the Bengal Tenancy Act applies to the Bhita lands. The learned Judge has held that in the present case the homestead is not held by the defendants who are also raiyats of the village as a part of their raiyati jote, but is held as a part of the under-raiyati and, therefore, in his opinion, the tenants can claim the protection of Section 182 of the Bengal Tenancy Act and cannot be ejected from the said land on notice u/s 49, although they are under-raiyats, also in respect of the same. But the principal ground for not accepting the decision of the District Judge is that, when a particular tenancy falls within the provisions of Section 49 of the Bengal Tenancy Act, it is difficult to understand how Section 182 of the Act can be

invoked in determining the status of the tenants.

2. The learned vakil for the respondents relies upon the case of Krishna Kanta Ghosh v. Jadu Kasya [1914] 21 C.L.J. 475 in support of his contention that the defendants are protected under the provisions of Section 182 of the Bengal Tenancy Act. In that case, however, the position was that the defendants tenants held the homestead land only under the plaintiff as their landlord and it was held that, as the homestead was not held by the tenants as part of their holding as raiyats, the incidents of the homestead were to be regulated under the provisions of Section 182 of the Bengal Tenancy Act. In the present case the under-raiyats held the homestead along with other lands as part of their under-raiyati tenancy and, if the plaintiff's are entitled to eject them from the lands held by them by service of notice, there is nothing under the law which prevents them from ejecting the tenants from the whole of the demised premises. In our opinion, Section 182 of the Bengal Tenancy Act does not apply to the present case. We find that the same view was taken in the case of Rahimuddi Meaji Vs. Srimati Amina Bibi alias Kali Bibi, . Partial ejectment can be allowed only under special circumstances, and cannot be decreed as a rule. Either the landlord is entitled to eject the tenant or is not some strong case must be made out for the purpose of holding that the landlord can eject a tenant from only a part of the tenancy. In our opinion, the landlords in this case are entitled to-recover possession of the whole of the lands held by the defendants under them as under-raiyats.

3. The next contention advanced on behalf of the respondents is that the plaintiffs having an eight anna share only with regard to certain lands are not entitled to khas possession. The point, however, was rightly decided against the defendants by the lower appellate Court as the District Judge held that he did not see any reason why the plaintiffs would not be able to determine the tenancy under them if the tenancy was otherwise terminable. It also does not appear why the learned Judge held that the plaintiffs would not be entitled to khas possession or even joint possession with regard to the lands in which they had only an eight anna share. The plaintiffs let out only eight annas of these lands to the defendants and, if the tenancy is terminated, they are entitled to possession of the lands which they had let out. As in the present case it was found that the tenancy was terminated by proper service of notice to quit, the plaintiff's are entitled to recover possession of all the lands for which they brought the suit.

4. The result, therefore, is that the appeal is decreed. The decree of the District Judge is set aside and that of the Munsif restored with costs in this Court and in the lower appellate Court.

5. The cross-objection is not pressed and is dismissed without costs.