

(1934) 12 CAL CK 0016
In the Calcutta High Court

Dhanias Namasit

APPELLANT

Vs

Haji Niamatulla and Others

RESPONDENT

Date of Decision : 14-12-1934

Acts Referred:

Citation : 163 Ind. Cas. 102

Hon'ble Judges : R.C. Mitter, J

Bench : Single Bench

Judgement

R.C. Mitter, J.—This appeal is on behalf of defendant No. 2 in a suit instituted against him and the Secretary of State for India in Council as defendant No. 1 by the plaintiff-respondent for recovery of possession of land and mesne profits. Both the Courts below have granted him a decree for possession. The first Court granted him a decree for mesne profits also, making the Secretary of State for India in Council liable for one fourth and defendant No. 2 for three-fourths of the mesne profits. Both the Secretary of State for India and defendant No. 2 preferred appeals to the learned District Judge. The Subordinate Judge who heard the appeals maintained the decree for possession but absolved the Secretary of State for India from the liability of paying mesne profits and held that defendant No. 2 was alone liable. Defendant No. 2 has preferred this appeal and challenges the decree for mesne profits only.

2. The plaintiffs came to Court with the case that one Sheikh Sheru of Kankurail was the owner of the disputed beel which was treated as a landed estate and assessed to revenue by the Government, under the Assam Land and Revenue Regulation, and an engagement for a term was entered into by Sheru with Government. The said term expired in 1918 when the Government officers took upon themselves the work of re-settlement under the said Regulation. In 1306 the plaintiff purchased the property from Sheru, paid revenue and remained in possession till 1918. No settlement was, however, offered to him. The defendant No. 2 obtained the Potta from the Government and began to possess the property. The Munsif found that Sheru was the owner of the beel and that the

plaintiff acquired the same by purchase from him. He also found that plaintiff had the status of a landholder under the said Regulation and was in possession at the time of the re-settlement in the year 1918, but was not offered a settlement by the Government. He accordingly decreed the claim of the plaintiff in the manner indicated above. The learned Subordinate Judge substantially affirmed these findings of the Munsif. Before me it is contended by defendant No. 2 that he is not liable for mesne profits. It is said that he was in possession under a settlement from the Government and was in no sense a wrongdoer, and that although he is bound to give up possession to the plaintiff he is under no liability to pay mesne profits.

3. The question seems to be of first impression and depends upon the construction of Sections 32, 35, 39 and 62 of the Assam Land and Revenue Regulation, I of 1886. Section 32 provides that:

(1) the settlement officer shall offer settlement to such persons (if any) as lie finds to be in possession of the estate and to have a permanent, heritable and transferable right of use and occupancy (2) if the settlement officer finds no person in possession as aforesaid, it shall be in his discretion to offer settlement to any person he thinks fit.

4. Section 35 states that

if a person to whom a settlement is offered refuses to accept it, it shall be in the discretion of the Settlement Officer, to exclude him for the term of the settlement from the possession of the estate, and to offer the settlement thereof to any other person he thinks fit.

5. The material portion of Section 39 is as follows:

Except as provided by Sections 35 and 36 (Section 36 not relevant to the case before me), no person shall, merely on the ground that a settlement has been made with him or with some person through whom he claims, be deemed to have acquired any right to or over any estate, as against other persons claiming rights to or over that estate.

6. Section 62 preserves intact the right of a person to sue in a Civil Court or declaration of his right to immovable property to which he may deem himself entitled.

7. On the findings arrived at the plaintiff was entitled to a settlement from the Government and the defendant No. 2 did not acquire as against the plaintiff any right to the estate by reason of his obtaining settlement from the Government. The plaintiff could turn him out and this can only be on the basis that the plaintiff had the right to possession and the defendant No. 2 had no right to remain in possession, so far as he is concerned. The defendant No. 2 may have the right to recover possession on the basis of his settlement from third persons if dispossessed by them but against the plaintiff he had no such right. His possession is a wrongful one so far as the plaintiff is concerned, and as the

liability for mesne profits depends solely upon wrongful entry, in my view the defendant No. 2 is liable to the plaintiff for mesne profits. Any other view, in my judgment would lead to manifest injustice. The Secretary of State is not liable to the plaintiff for any damage by reason of the illegal settlement made with defendant No. 2 by his officers, and the absolution of defendant No. 2 from liability would only exclude the plaintiff from the profits of the lands to which he is justly entitled. The appeal is accordingly dismissed with costs. The judgment does not affect Order No. 31, dated May 26, 1932, passed by the Munsif.