

(1920) 05 CAL CK 0053
In the Calcutta High Court

Dhirendra Kumar Roy Choudhury and Others	APPELLANT
Vs	
Radha Charan Roy Choudhury and Others	RESPONDENT

Date of Decision : 12-05-1920

Acts Referred:

Bengal Tenancy Act, 1885 — Section 155, 23, 25
Specific Relief Act, 1877 — Section 54, 55

Citation : 57 Ind. Cas. 758

Hon'ble Judges : Teunon, J; Asutosh Chaudhuri, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit primarily for the ejectment of the defendants as trespassers. In the alternative the plaintiffs prayed that if it should be held that the defendants were not trespassers but tenants, an injunction should be issued restraining the defendants from raising pucca structures on the plot in question. They further prayed for an order directing the defendants to remove those constructions in so far as they had been erected.

2. It has been found by both the Courts that the plot of land in question is an accretion to the occupancy holding of the defendants under the plaintiffs and that, therefore, by virtue of Regulation XI of 1825 this plot as an accretion to their occupancy holding has become a part thereof. Now what the defendants have done is that for the purposes of a public cremation ground they have built on this plot of land a pucca plinth, tin shed and also a cremation Ghat. It has been held that they have thereby misused this portion of the holding and rendered it unfit for the purposes of the tenancy, that is to say, for the purpose of cultivation, and there can be no doubt that the construction of a public cremation Ghat with accessory plinths and sheds on an occupancy holding is a misuse of that holding or the plot on which the cremation buildings had been constructed and thereby rendered it unfit for the purposes of cultivation and tillage.

3. In appeal it is contended before us that inasmuch as this was a suit for

ejectment, the defendants having been found to be occupancy raiyats in respect of this holding, the plaintiffs landlords ought to have proceeded in the manner indicated by Sections 25 and 155 of the Bengal Tenancy Act. The answer to this is that the plaintiffs did not seek the ejectment of the defendants if they were in fact their tenants. They were satisfied that the defendants should remain on the land as tenants and the remedy that they desired was that the misuse of the plot in question should be remedied. That such a suit based on Section 23 of the Bengal Tenancy Act and Sections 54 and 55 of the Specific Relief Act is maintainable, there is clear authority in the case of Surendra Narain Singh v. Hari Mohan Misser 31 C. 174 : 9 CWN 87. It is quite true that the decision of this Court in that case was reversed by their Lordships of the Privy Council in the judgment reported as Hari Mohan Misser v. Surendra Narayan Singh 34 C. 718 : 17 M.L.J. 361 : 11 C.W.N. 794 : 4 A.L.J. 497 : 9 Bom. L.R. 750 : 6 C.L.J. 19 : 34 I.A. 433 (P.C.). But their Lordships reversed the judgment of this Court not on the ground that the suit did not lie; the judgment of their Lordships proceeded on the assumption that a suit of this nature, as was held by a Division Bench of this Court, for a remedy spoken of by this Court as a "lesser remedy than ejectment" was maintainable.

4. That being so, this appeal fails and is dismissed with costs.