

(1911) 12 CAL CK 0008

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 196 of 1910

Digbijoy Roy and others

APPELLANT

Vs

Shaikh Ata Rahman and others

RESPONDENT

Date of Decision : 01-12-1911

Acts Referred:

Citation : (1911) 12 CAL CK 0008

Final Decision : Allowed

Judgement

1. This Appeal is directed against a decision by which the Subordinate Judge in reversal of the decree of the Original Court has made a decree in favour of the Defendant in a suit for ejectment. There is no controversy as to the circumstances under which the action has been commenced. The Plaintiff alleges ha the holding in dispute is non-transferable, and that nevertheless the original tenant has transferred it to the Defendant by a conveyance executed on the 26th March 1906. He therefore seeks to eject the Defendant as a trespasser. The grounds, upon which claim is resisted, are threefold : first, that the Plaintiff has recognised the Defendant as his tenant; secondly, that the holding is permanent and transferable; and thirdly, that if it is an ordinary occupancy holding, it is transferable by custom or local usage. The Court of first instance found in favour of the Plaintiff upon each of these points and made a decree in his favour. Upon appeal the Subordinate Judge has reversed that decision upon the first of the points stated and has dismissed the suit; he has expressed no opinion as to the second and third grounds on which the claim is resisted.

2. On behalf of the Plaintiff it has been contended in this Court that upon the facts found there has been no recognition of the Defendant as tenant by the Plaintiff. It is not disputed that on the 17th March 1908 the Plaintiff instituted a suit for rent against the original tenant for the period between April 1904 and December 1907. On the 9th April 1908 the tenant tiled a written statement in which he alleged that he had transferred his interest in the holding to the resent Defendant on the 26th March 1906. The transferee appeared in Court at the

same time and prayed that he might be added as a Defendant. The Court granted this application and the result was that the transferee was treated as a party Defendant. On the same day the transferee made a payment of the amount claimed in the suit to the pleader of the Plaintiff who certified the payment to the Court. The Court thereupon recorded an order that the suit was dismissed on full satisfaction. It is not disputed that the sum paid to the pleader was on that very day made over by him to the Plaintiff.

3. The Court of first instance upon these facts held that the acceptance of the sum paid by the transferee to the pleader of the Plaintiff did not amount in law to a recognition of the validity of the transfer. The Subordinate Judge has taken a different view and has held that the Plaintiff is estopped from questioning the validity of the purchase by the Defendant. On behalf of the Plaintiff this view has been controverted on two grounds, namely, first, that as the pleader in his petition to the Court stated explicitly that he had received the money from the transferee marfaiwaree there was no recognition, and secondly, that the act of the pleader was not binding upon the Plaintiff as the pleader had no authority to recognise the alleged transfer. In our opinion, there is no room for reasonable controversy that the acceptance of the sum paid by the transferee did not amount to a recognition of the validity of the transfer. It is clear from an examination of the terms of the petition that the pleader acted very cautiously. The petition recited that the sum had been paid through the transferee. The Bengali word used is marfatwari. The learned Vakil for the Appellant has invited our attention to the cases of Gout Lal v. Rameswami 6B.L.R. App. 92(1870), Wilson v. Radhadulari 2 C. W. N. 63 (1897) and Rasamoy Purkait v. Srinath Moyra 7 C. W. N. 132 (1902), where the earlier authorities on the point will be found collected, to show that an acceptance of rent under circumstances similar to those of the present case does not in law operate as a recognition of the validity of the transfer. The cases mentioned undoubtedly support the contention of the Appellant. But the case nearest in point is that of Khoodeeram Chatterjee v. Rukhinee Boistobee 15 W. R. 197 (1871), which is a direct authority for the proposition that when rent has been received from a transferee not as a transferee but only as the agent or representative of the original tenant, there is no recognition of the validity of the transfer. A similar view underlies the decision in Kurani Dasi v. Sajoni Kant 12 C. W. N. 539 (1908).. The view we take I not opposed to the decision in Baroda Churn Dutt v. Hemlata Dasi 13 C. W. N. 833 (1909), where it was ruled that acceptance of rent from a mortgagee of an occupancy holding in his character as mortgagee amounted to a recognition of the validity of the mortgage. It is obvious that in that case the money was accepted by the landlord from the transferee who professed to act in a particular character and that character was recognised by the landlord. Similar observations apply to the decision in Thomas Barclay v. Hossein Ali Khan 6 C. L. J. 601 (1907), where money was accepted by the landlord with notice that it was deposited by a transferee who claimed protection in that character. The decision of the Judicial Committee in Naba Kumati v. Behary Lal 11 C. W. N.

865 : s. c. I. L. R. 84 Cal 902 (1907). upon which much reliance was placed by the learned Vakild for the Respondent is also clearly distinguishable. In that case the money was paid by the occupier who claimed to be a transferee of the disputed tenure, and the receipt granted to him showed that the landlord recognised that he made the payment in his character as transferee. Consequently the acceptance of money under such circumstances was equivalent to the recognition of the validity of the transfer. It has been argued however by the learned Vakild for the Respondent that the language of the petition is ambiguous. And that as the transferee was an infant on whose behalf the rent was paid by his guardian, the statement in the petition might well be interpreted to mean that the money was received from the infant the transferee through his guardian. We are not prepared to accept this ingenious construction. We cannot overlook the fact that the presumption is that the pleader acted within the scope of his authority. It is now well-settled, as is clear from the decisions in Bhutnath v. Ramlal 6 C. W. N. 82 (1900) and Jagapati v. Ekambarn I. L. R. 21 Mad. 274 (1897)., that although a pleader has no power to compromise a suit unless he is specially authorised in that behalf, he can bind his client by an admission upon a question of fact [Kower Naitain v. Sreenath 9W. R. 485 (1868). Rajundet v. Bijai Govind 2 M. I. A. 253 (1839), Hinga Lal v. Mansa Ram I. L. R. 18 All. 3 4 (1896), Venkata Nara Simha v. Bhushya Katlu I. L. R. 22 Mad. 538 (1899, provided that such question falls within the scope of the suit in which he has been retained. [Nando Lal v. Nistarini I. L. R. 27 Cal. 428 (1900). Swinfer v. Chelmsford I F. and F. 619; 27 L. J. Ex. 382 (1859). In the case before us, the question in controversy in the suit for rent was the liability of the original tenant Defendant to pay to the Plaintiff landlord the rent claimed. There was no question as to the liability of the transferee Defendant, much less was there any question as to the validity of the transfer alleged. Under these circumstances it would clearly be beyond the scope of the authority of the pleader to bind his client by an admission of the validity of the transfer. It was possibly this fact which led the pleader to act with caution and justifies the language used by him in the petition. We are therefore of opinion that there has been no recognition of the validity of the transfer in favour of the present Defendant. In this view the decree made by the Subordinate Judge cannot be sustained.

4. The learned Vakild for the Respondent has however strenuously contended that it is possible to support the decision upon a different ground. He has argued that if the payment of the 9th April 1908 be deemed to have been made not by the transferee as such but as on behalf and for the benefit of the original tenant, there was a recognition of the subsistence of the tenancy in spite of the transfer of the 26th March 1906. Consequently there has been no abandonment of the tenancy and the Defendant is entitled to resist the claim for ejectment on the ground that a subsisting tenancy still in ervenes between the Plaintiff and the Defendant. In support of this proposition, reliance has been placed upon the decision of the Judicial Committee in the case of Gidhari Lal Roy v. The Bengal Government 12 M. I. A. 448 (1868). That decision, however, is clearly

distinguishable and is of no assistance to the Respondent. The decision is merely an authority for the elementary proposition that the Plaintiff in an action in ejectment must succeed on the strength of his own title and that it is open to the Defendant though he may have no title, to plead *jus tertii* to defeat the claim of the Plaintiff. In the case before us, even if it be assumed that the effect of the acceptance of the money paid on the 9th April 1908 is the recognition of the subsistence of the tenancy up to December 1907, it does not follow that there was any tenancy in existence at the date of the institution of this suit. It is not disputed that at the time when the present action was commenced, the original tenant was not in occupation, and the person in possession was the Defendant. It is also not disputed that the Defendant came into occupation on the assumption that he had acquired a valid title by purchase, and that his transferor had severed his connection with the holding. Under these circumstances, the the legitimate inference is that there had been an abandonment of the tenancy by the original tenant. The Defendant, therefore, if the holding is not proved to be transferable, is a trespasser in occupation and is liable to be ejected. The result is that this Appeal is allowed and the decree of the Subordinate Judge set aside. As the questions raised in the third and fourth issues have been found against the Defendant by the Subordinate Judge, the decree of the Court of first instance will be restored. In view of the fact that the Defendant paid a sum of money which found its way into the hands of the Plaintiff, we direct that each party bear his own costs of the litigation throughout