

(1922) 01 CAL CK 0044
In the Calcutta High Court

Dinanath Das and on his death his heirs and Legal
Representatives Kripanath Das and Others

APPELLANT

Vs

Gopal Chandra Das and Others

RESPONDENT

Date of Decision : 04-01-1922

Acts Referred:

Evidence Act, 1872 — Section 98

Citation : AIR 1923 Cal 309 : 67 Ind. Cas. 90

Hon'ble Judges : Newbould, J;Coming, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit in which the plaintiffs-respondents have obtained a decree directing removal of a wall. The finding is that the wall must be removed on two grounds; partly by reason of its encroachment on the land in the possession of the plaintiffs and partly because it is built on the land leased to the defendant from the plaintiffs under a lease which prohibits them from creating a pucca wall on the land.

2. The main point in this case is the question of the construction of the lease. The portion of the lease which governs the defendants' right to build is as follows: "You shall not be competent to make big excavations but you shall be competent to construct pucca wall, pucca privy and pucca plinth of the tin ghur." In the lower Courts the only contention that appears to have been raised on this point was that the Bengali word which has been translated as plinth also meant wall. Here it is contended that these words do not prohibit construction of a wall and that the lower Courts have wrongly treated the exceptions as if they were the principal terms of the document. But we think, reading that clause as a whole, it was the intention of the parties that the defendants' right to erect permanent structures should be limited to those specified in this condition, and that this condition amounts to a prohibition to build any other structures than those expressly mentioned.

3. There is no force in the contention that the defendants were justified in

encroaching on other land of their lessor because the amount of land of which he was given possession was less than the area stated in the lease. This will give him no right to encroachment beyond, the well-defined boundaries which there were on the south of the land.

4. The last point urged was that evidence has been wrongly admitted in order to explain the terms of the document. It seems that the point in dispute was as to the meaning of a particular word in the document and such evidence might perhaps be admitted u/s 98 of the Evidence Act. In any case we hold in interpreting the document without any consideration of the evidence that the decisions of the lower Courts on this point are correct.

5. The appeal is accordingly dismissed with costs.