

(1918) 03 CAL CK 0022
In the Calcutta High Court

Gabinda Chandra Ghose Biswas and Others

APPELLANT

Vs

Nandadulal Sut

RESPONDENT

Date of Decision : 07-03-1918

Acts Referred:

Citation : 45 Ind. Cas. 317

Hon'ble Judges : Walmsley, J;Richardson, J

Bench : Division Bench

Judgement

Richardson, J.—This appeal arises out of a suit brought by the plaintiffs for the purpose of ejecting the defendant from certain homestead land in his possession. The case for the plaintiffs was that the defendant was a licensee and was not entitled to any notice to quit. The plaintiffs nevertheless alleged that they had served a notice to quit. The defence raised by the defendant was that he was in possession of the land as the plaintiffs' tenant. Both the Courts below have concurred in finding that there is no relationship of landlord and tenant between the parties. Apparently when the defendant obtained possession, there was some talk of a lease being granted to him but the negotiations come to nothing. The first Court further found that the notice to quit had been served and decreed the suit allowing the defendants two months' time to remove the huts which he had erected. There is nothing to show that these huts were in any sense of the term permanent structures. In the lower Appellate Court the learned Subordinate Judge, though, as I have said, he concurred with the Munsif that the defendant was not a tenant, nevertheless held that he was entitled to a notice to quit arwl that no notice had been served. In my opinion on the facts found the defendant is a mere licensee and in the words of Lord Bllenborough in Doe d. Knight v. Quigley (1810) 2 Camp. 505 : 11 R.R. 780, "If this was a tenure of any sort it was a tenancy at sufferance and a notice to quit was unnecessary." Whether, therefore, any notice to quit was served or not, I agree with the learned Munsif that the plaintiffs are entitled to possession of the land. In the circumstances lam of opinion that the judgment and decree of the Subordinate Judge should be discharged and the decree of the Mnnsif restored, with this modification that the

time allowed for removing the huts should be extended for a period of two months from the date of the arrival of the record in the Trial Court. We make no order as to costs. Let the record be sent down as soon as possible.

2. Walmsley, J.--I agree.