

(1909) 08 CAL CK 0022
In the Calcutta High Court

Gangaram Patna	Vs	APPELLANT
Sasi Sekhar Chackravarty		RESPONDENT

Date of Decision : 09-08-1909

Acts Referred:

Bengal Tenancy Act, 1885 — Section 111

Citation : 3 Ind. Cas. 100

Hon'ble Judges : Caspersz, J

Bench : Single Bench

Judgement

Caspersz, J.—It has been found that defendant No. 1 is an under-raiyat and that the term of his written lease expired in Magh 1804. The plaintiff's suit is to obtain khas possession of the land demised by ejecting defendant No. 1. -The Munsif dismissed the suit, but the lower appellate Court gave the plaintiff a decree.

2. The two contentions in second appeal are those, first, that defendant No. 1 became a tenant holding over under an arrangement with the plaintiff, and that, therefore, a notice to quit was necessary as a condition precedent to his ejectment, and secondly, that the plaintiff should have proceeded under Chapter X of the Bengal Tenancy Act, and not have had recourse to the ordinary Civil Court.

3. It appears that defendant No. 1 was recorded as a settled raiyat in the settlement proceedings, and he relies on that entry in his favour. The plaintiff sets forth in his plaint how the defendant came to remain in possession of the land -after the expiration of the term of his lease. The Subordinate Judge has found that there was no acquiescence in the continuance of the tenancy by the plaintiff, for he merely accepted a half share of the crops for the year 1313, because that share. was given him under the orders of the Criminal Court. This appears to me to be the only proper inference to be drawn from the acceptance of the rent for that year. It was not a voluntary acceptance such as would amount to acquiescence in the holding over of the land by defendant No. 1.

4. Then, with regard to the second contention, the learned vakil for defendant No. 1 relies on the case of Jogendra Nath Roy v. Krishna Promoda Dassce 12 C.W.N. 1032 : 8 C.L.J. 322. But there is a more direct authority in point, the case of Troylkhya nath Bose v. M.N. Macleod 28 C. 28. I have already, mentioned that the suit was one to obtain khas possession of land on ejectment of the tenant who had no right to hold over, and there is no section in the Bengal Tenancy Act which would have the effect of barring a suit of that kind, in order that the matters in dispute might be more conveniently decided by the special tribunals connected with the record-of-rights; Section 111 of the Act merely prohibits suits or applications for the alteration of the rent or the determination of the status of any tenant in. the area to which the record-of-rights applies; and Section 111A refers to suits in respect of orders directing the preparation of a record-of-rights under Chapter X or in respect of other matters for which there is a special procedure prescribed by the Chapter. The suit now under appeal is of a very different description, and there is nothing in the law to prevent the plaintiff from proceeding in the ordinary Civil Court to obtain the relief that he has obtained. The appeal, therefore, fails and must be dismissed with costs.