
(1914) 07 CAL CK 0009
In the Calcutta High Court

Gonesh Mondol

APPELLANT

Vs

Thanda Namasundrani and Others

RESPONDENT

Date of Decision : 27-07-1914

Acts Referred:

Bengal Tenancy Act, 1885 — Section 85
Evidence Act, 1872 — Section 91

Citation : 38 Ind. Cas. 489

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

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal from the decision of the Subordinate Judge of Jessore, dated the 1st May 1912, reversing the decision of the Munsif of Magura.

2. The appeal is by the defendant No. 1. The plaintiff sued to recover possession of certain land which had been leased to (or as they say in this country, settled with) her by one Tarini Charan Sen, who was the raiyat of the land with the right of occupancy. After the lease to the plaintiff, Tarini Charan Sen let out the land to the defendant; and the plaintiff has now brought the present suit to recover possession of the land.

3. A point has been argued before us, namely, with reference to Section 85 of the Bengal Tenancy Act. Under the terms of that Section the under-lease to the plaintiff is in excess of the period authorised by the Section and, therefore, ought not to have been registered. The cases in this Court on this point appear to be in a state of chaos. Those cases are numerous and are difficult to reconcile. The later authorities, however, agree in this, first of all, that u/s 85 of the Bengal Tenancy Act, even if the sub-lease has, in contravention of the terms of Section 85, been registered it is inadmissible in evidence; and, secondly, that being so, under the provisions of the 91st Section of the Indian Evidence Act, oral evidence cannot be given as to the terms of the agreement; that is when the case stands apart from any question of possession. It is only necessary to refer in that respect to the case of Jarip Khan v. Durfa Bewa 15 Ind. Cas. 476 : 16 C.L.J.

144 : 17 C.W.N. 59. That case has been followed in subsequent cases, namely, in the case of Telam Pramanik v. Adu Shaikh 18 Ind. Cas. 791 : 17 C.W.N. 468 and the case of Baisnab Charan De v. Sarat Chandra Kar 38 Ind. Cas. 487 : 24 C.L.J. 538. The Chief Justice, however, in the case of Jarip Khan v. Durfa Bewa 15 Ind. Cas. 476 : 16 C.L.J. 144 : 17 C.W.N. 59 expressly stated that the case before him did not rest upon any question of possession having been given to the plaintiff; and in the course of his judgment he explained a decision that had been given by Mookerjee and Coxe, JJ., in the case of Manik Borai v. Bani Charan Mondal 10 Ind. Cas. 489 : 13 C.L.J. 649. It is quite true that the judgment of the learned Chief Justice shows that he did not approve of all the reasons that were given by Mookerjee and Coxe, JJ., in Jarip Khan v. Durfa Bewa 15 Ind. Cas. 476 : 16 C.L.J. 144 : 17 C.W.N. 59; but he considered that the case could have been decided on the findings of the learned Judges that the plaintiff in that case had had possession of the property. That seems to me to be the position of matters; because, as has been pointed out in this Court, there is a class of cases in which it is said that where a tenant cannot or does not produce his lease in writing, he can, nevertheless, establish his tenancy from possession and other circumstances. The question in this case, therefore, is: Does the case fall within the decision of the case of Jarip Khan v. Durfa Bewa 15 Ind. Cas. 476 : 16 C.L.J. 144 : 17 C.W.N. 59 or does it fall within the decision in Manik Borai v. Bani Charan Mondal 10 Ind. Cas. 489 : 13 C.L.J. 649 as explained by the learned Chief Justice? That depends purely, in my opinion, on whether there has been a finding that the plaintiff was, in fact, in possession of this property as sub-lessee, and was subsequently dispossessed by the appellant before us. It may be admitted that the finding as to possession is not clear and that the point is not altogether free from doubt. But from a perusal of the judgments of both the Courts below, I think that the lower Courts have, in fact found that the plaintiff was in possession of the property, because their finding is that, the plaintiff having been in possession was subsequently ousted by the defendant No. 1 and, therefore, the suit was not barred by limitation. Now, that being the fact found, namely, that the plaintiff was in possession of this property as sub lessee, I consider that this case falls within the decision of Mookerjee and Coxe, JJ., in Manik Borai v. Bani Charan Mondal 10 Ind. Cas. 489 : 13 C.L.J. 649 as explained by the learned Chief Justice in the case of Jarip Khan v. Durja Bewa (1).

4. The present appeal, therefore, in my opinion, fails and must be dismissed with costs.

Richardson, J.

5. I agree.