
(1894) 08 AHC CK 0003
In the Allahabad High Court

Haidri Begam

APPELLANT

Vs

Nathu

RESPONDENT

Date of Decision : 11-08-1894

Acts Referred:

Citation : (1895) ILR (All) 45

Hon'ble Judges : John Edge, J; Banerji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Edge, Kt., C.J. and Banerji, J.—The suit, out of which this appeal arose, was one (or ejectment and also for arrears of rent. As to the claim for arrears of rent, that was barred u/s 13 of Act No. XIV of 1882 by the decision in a prior suit brought in a Court of Small Causes. It was contended here that as a Court of Small Causes could not have tried the suit for ejectment, its decision did not operate as res judicata qua the claim for rent. That is a mistaken contention. A Court of Small Causes is competent to try this suit so far as it relates to the cause of action with reference to the rent, and the fact that the Court of Small Causes is not competent to try this suit so far as it is a suit for ejectment, does not make Section 13 of the Act inapplicable on the question of the rent. The suit, so far as the claim for rent was concerned, was rightly dismissed, and we dismiss this appeal, so far as it relates to the claim for rent, with proportionate costs.

2. The suit for possession of the house by ejectment of the defendant was dismissed on the ground that no notice determining the tenancy as required by Section 106 of Act No. IV of 1882 had been given. A notice was not necessary in this case, as, in the prior suit to which we have referred, this defendant had denied the plaintiff's title and denied that there was any contract of tenancy between them. The question as to whether in such a case a notice is necessary has been considered in several cases in this Court: but we think that the law is now well settled, and we cannot better express it than by quoting the judgment of Muttusami Ayyar and Best, JJ., in Unhamma Devi v. Vaikunta Hegde ILR 17

Mad 218. What those learned Judges said was: "Nor is there any doubt that the tenant forfeits this right to notice by denying the landlord's title prior to suit. It is also settled law that the denial of title for the first time in the suit does not disentitle the tenant to notice, for the reason that the plaintiff is bound to show that at the date of suit he had a complete cause of action; and subsequent denial of title, even if false, does not release the landlord from proving his case or amount to a waiver by the defendant of his right to notice." The same subject is referred to in the judgment in *Dodhu v. Madhavrao Narayan Gadre* ILR 18 Bom 110. We set aside so much of the decisions of both the lower Courts as dismissed the plaintiff's suit for possession of the house, and we remand this case u/s 562 of Act No. XIV of 1882, to the Court of First Instance for trial of the suit, so far as it relates to the house, on the merits. Costs of this appeal and in the Court below are allowed to the parties in proportion to their success.