
(1900) 07 CAL CK 0013
In the Calcutta High Court

Harro Kumari Chowdhurani and Others	APPELLANT
Vs	
Purna Chandra Sarbogya and Others	RESPONDENT

Date of Decision : 31-07-1900

Acts Referred:

Citation : (1901) ILR (Cal) 188

Hon'ble Judges : Francis W. Maclean, J; Banerjee, J

Bench : Division Bench

Judgement

1. It remains now to consider the third and last contention of the appellants. It is argued for the appellants, that as the lease to the defendants reserves rent at a certain rate per bigha and not a lump sum, as the rent of the taluq, they are bound to pay rent for the lands in their possession, notwithstanding that they have been dispossessed by their landlords from other lands of their tenure, and in support of this contention the case of Dhunput Singh v. Mahomed Kazim I.L.R. (1896). 24 Cal. 296 is cited. The case, in our opinion, is, however, quite distinguishable from the present. There the case comprised several mouzahs or villages, and though they were granted in putni as a single tenure, the rent of each village was separately specified, and it was held that the landlord, in that state of things, was not debarred from recovering rent for some of the villages, merely because he had dispossessed the putnidar from the rest. But we do not think it can reasonably be said that each bigha of land is separately assessed and separately chargeable with rent in this case, in the sense in which each village was considered separately assessed and separately chargeable in the case cited. On the contrary, that case is rather an authority in favour of the defendant; for the learned Judges in their judgment say, after considering various English and Indian cases bearing on the point: "The principles to be gathered from these cases are first that, where the act of the landlord is not a mere trespass, but something of a grave character, interfering substantially with the enjoyment by the tenant of the property demised to him, there is a suspension of rent during such interference, though there may not be an actual eviction. and second that, if such interference be in respect of even a portion of the property, there should

be no apportionment of the rent, the whole rent being equally chargeable upon every part of the land demised." We may add that there is a further reason why a lessor should not be allowed to claim apportionment of rent when he has himself evicted his tenant, and that reason is: "That no man may be encouraged to injure or disturb his tenant in his possession, whom by the policy of the law he ought to protect and defend;" and that reason applies with special force to a case like the present, where the lease is one of jungle lands entailing much trouble and expense to bring them under cultivation. We are therefore of opinion that the third contention of the appellants must fail.

2. The result, then, is that the decree of the lower Court must be varied so far as it relates to the land lying to the north of the red line on the Amin's map, and down to the point E on the Matbaria khal, and there must be a declaration in the plaintiff's favour that these lands are not included in the kabuliat. Subject to such variation the decree of the Court below will be affirmed, and there will be proportionate costs of the suit and of this appeal.