

(1927) 07 CAL CK 0045
In the Calcutta High Court

Jatindra Nath Choudhuri and Others

APPELLANT

Vs

Trailakaya Nath Das

RESPONDENT

Date of Decision : 18-07-1927

Acts Referred:

Citation : AIR 1928 Cal 142

Judgement

1. This appeal by the plaintiffs arises out of a suit for rent with regard to a portion of the decree made by the Additional District Judge of Alipore affirming the decision of the Subordinate Judge. The plaintiffs let out a large tract of land to the defendant in 1315. The land was jungle and the lease was a reclamation lease stipulating that the tenant was to pay rent at the rate of twelve annas per bigha for the lands under, cultivation. It was stated in the lease that the area demised was about 1,000 bighas. The suit was for arrears of rent from 1323 to 1326. The dispute was as regards the area actually under cultivation. It was found that the defendant had encroached upon a certain area of jungle lands within the khas mahal of the Government contiguous to the land of the plaintiffs which was demised to the defendant. The plaintiffs claim rent with regard to those lands also which actually belong to Government. The answer of the defendant is that he is not liable to pay rent to the plaintiffs for those lands. It is contended on behalf of the appellants that when a tenant encroaches upon the contiguous waste land either of the landlord or of a neighbouring proprietor, such encroachment enures for the benefit of the landlord, and the encroached land becomes a part of the tenure. That being so, according to the law in England as well as in this country, the plaintiffs, as the landlords of the defendant, are entitled to recover rent on account of the lands encroached upon. The rule in England is that, so long as the tenant is in possession of the encroached land, he holds it as a part of the demised premises and, after the end of the term, the landlord is entitled to get possession of that land. There is no question under the English law of getting an increased rent for the increased area. Babu Brojo Lal, however, contends, on the strength of the principle that a tenant making an encroachment on the neighbouring land holds it as a part of the tenure, he is

liable to pay increased rent for increased area to his landlord with regard to the contiguous land encroached Upon although it belongs to a third party. There is no authority for this proposition, and the difficulty in accepting this contention is that, if it is correct, the position of the tenant who encroaches upon such land would be to place him under two opposing fires. The true owner of the land encroached upon may either sue to eject him and ask for damages or he may sue for fair and equitable rent according to the practice prevailing in this country where a squatter takes possession of waste or jungle land. In such a case, if the true owner sues the tenant for rent, according to the proposition enunciated by Babu Brojo Lal, he would be liable to pay rent both to his landlord with regard to the demised premises and to the owner of the encroached land. This difficulty is sought to be met by Babu Brojo Lal, by the answer that if the true owners sue his tenant, then his client would not certainly be entitled to recover any rent on account of the encroached land. But, so long as the true owner does not come, Babu Brojo Lal's contention, is that he is entitled to claim rent from his tenant. That proposition if properly tested, would lead to curious results. Let us assume that Babu Brojo Lal's client sues the tenant for one year's rent and recovers a decree for the lands the tenant had encroached upon. After he has obtained his decree and realized the money, the true owner sues the tenant for rent or damages for use and occupation. The true owner would naturally succeed in his suit. What would be the position of the tenant then? He cannot recover from his landlord the money paid in execution of a decree passed by a Court and, therefore, he would be liable both to his own landlord as well as to the true owner whose land he has encroached upon for a single act of trespass. The proposition, therefore, put forward by the appellants, does not appear to be a correct one. The appeal must accordingly be dismissed with costs.