

(1917) 03 CAL CK 0043
In the Calcutta High Court

Jharu Charan Maity

APPELLANT

Vs

Sridam Chandra Mahapatra

RESPONDENT

Date of Decision : 09-03-1917

Acts Referred:

Bengal Tenancy Act, 1885 — Section 72
Transfer of Property Act, 1882 — Section 50

Citation : 40 Ind. Cas. 655

Hon'ble Judges : Beachcroft, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal under Clause 15 of the Letters Patent from a judgment of Mr. Justice Newbould in a suit for arrears for rent. The plaintiff-appellant is the usufructuary mortgagee from the second defendant, and is, under the terms of the mortgage contract dated the 5th July 1910, entitled to possession. The first defendant is the actual cultivator who holds under the second defendant under a lease dated the 2nd May 1904. The plaintiff brought this suit to recover from the first defendant arrears of rent which had accrued due after the date of the mortgage. The first defendant pleaded that he had paid the rent to his landlord, the mortgagor second defendant. The Court of First Instance decreed the suit. The District Judge has reversed that decision and dismissed the suit; his decree has been affirmed on second appeal to this Court. It is plain that in view of the provisions of Section 72 of the Bengal Tenancy Act, the plaintiff is not entitled to succeed. Under Sub-clause (1) of that section a tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant. It has been found that the plaintiff did not give the requisite notice to the tenant in the case before us; there is thus a complete answer to the claim and we need not consider whether the first defendant paid the arrears of rent to the second defendant in good faith within the meaning of Section 50 of the Transfer of Property Act.

2. The result is that this appeal is dismissed with costs.