

(1909) 06 CAL CK 0068
In the Calcutta High Court

Jogendra Nath Sircar and Others

APPELLANT

Vs

Tincowri Bhattacharjya

RESPONDENT

Date of Decision : 21-06-1909

Acts Referred:

Citation : 3 Ind. Cas. 205

Hon'ble Judges : Lawrence Jenkins, C.J.; Mookerjee, J

Bench : Division Bench

Judgement

1. The present appeal arises out of a suit brought by the plaintiffs as landlords to eject the defendant as a trespasser from a certain holding. The holding in question was settled with one Fakir Dass Maity and the present defendant in execution of a money-decree against Fakir Dass Maity sold up the holding and took possession in January 1900. The plaintiffs' case was that the holding was not transferable, that the defendant acquired no title by his purchase and that, therefore, he was liable to be evicted as trespasser. The defence was that the jote was a permanent jote at a fixed rate of rent and that there was no abandonment of the jote by the tenant, that rents for the jote had been paid all along by the original tenant and that, therefore, the plaintiffs were not entitled to re-entry and accordingly they would not succeed in the present suit for eviction. The Court of first instance dismissed the plaintiffs' suit but on appeal the lower appellate Court has decreed it. The defendant has appealed to this Court.

2. It is very difficult from reading the judgment of the lower appellate Court to understand on what grounds that Court has come to the conclusion that the defendant is liable to eviction. The judgment opens with an obvious misstatement of facts, the lower appellate Court apparently being misled by the form of issue No. 2 of the Court of first instance and the manner in which that issue was dealt with, states that the Court of first instance deemed the defendant to be a trespasser. The finding of the Court of first instance, however, on the second issue does not mean anything of this sort. The question before the Court was whether notice was necessary by the plaintiffs to the defendant and

the Court of first instance held that no notice was necessary because the plaintiffs alleged that the defendant was a trespasser. There was no finding on that issue that the defendant was a trespasser. The learned Subordinate Judge goes on to say : "As no cross-appeal has been preferred the defendant may be accepted as a trespasser." The Court of first instance dismissed the plaintiffs' suit and it was certainly not necessary for the defendant to file a cross-appeal against any special finding though in fact in the present instance there does not appear to be any finding by the Court of first instance that the defendant was a trespasser. The learned Judge of the lower appellate Court then says : "I agree with the learned Munsif in holding that there has been no abandonment by the old tenant ;" and in spite of this finding the lower appellate Court relying on certain cases to which it refers in its judgment held that the plaintiffs were entitled to evict the defendant. The two rulings on which the Subordinate Judge relies, do not appear to have any application to the present case and the case of Mathur Mundal v. Ganga Charan Gope Ghose 3 C.W.N. 151 supports the view contrary to that taken by the Subordinate Judge. It was necessary for the plaintiffs in order to entitle them to any relief in their present action to prove not only there had been a sale of the holding in question but that since that sale or as a consequence of that sale there had been an abandonment of the holding by the defendant. If there was no such abandonment the landlords would not be entitled to reentry and, therefore, in a suit like the present they would not be entitled to any relief. In the present suit not only has it been found by the Subordinate Judge in concurrence with the Court of first instance that there was no abandonment, but it was also found that rent was paid after the sale by the old tenant and that the tenant remained in possession of a certain portion of the holding. In these circumstances, the plaintiffs, as the landlords having received the rent and the tenant not having abandoned the holding"are certainly not entitled to re-entry and, therefore, they are not entitled to the relief which they seek for by evicting the present defendant. The only person who in the circumstances found in the present case may possibly be entitled to any relief, and that is doubtful, is the tenant himself whose rights might be held to have affected by the sale in execution of the money-decree

3. For the respondent a rather novel argument has been advanced to the effect that the possession of the original tenant after the sale was permissive and, therefore, not judicial, it is not clear what is meant by this argument, but from the judgment of both the lower Courts it appears that the original tenant after the purchase refused to give up possession of the house standing on the land and a portion of the land and in those circumstances it is, in my opinion, impossible to say that his possession was permissive.

4. The result, therefore, is that I am unable to affirm the judgment and decree of the lower appellate Court. I accordingly set them aside and restore those of the Court of first instance. The defendant will be entitled to his cost against the plaintiff in all the Courts.

5. The plaintiff appealed.

6. There is a long course of judicial decisions which leaves us no alternative but to decide that where, as has been found here, there is no abandonment of the holding by the original tenant, the landlord cannot proceed in ejectment against the transferee. We are in complete agreement with Mr. Justice Brett, and we must, therefore, dismiss this appeal with costs.