

(1935) 01 CAL CK 0022
In the Calcutta High Court

Jotindra Nath Haldar and Others

APPELLANT

Vs

Aswini Kumar Mondal and Others

RESPONDENT

Date of Decision : 17-01-1935

Acts Referred:

Citation : AIR 1935 Cal 554

Judgement

1. The plaintiffs in the suit out of which this appeal has arisen, prayed for recovery of arrears of rent in respect of a tenancy bearing an annual rental of Rs. 627-13-0 held by the tenant defendants, defendants 1 to 29 in the suit. The claim for realisation of rent was in regard to the arrears due for the years 1330 to 1333 B.S. It appears to be clear from the plaint in the suit that the plaintiffs' claim for rent was on the footing that the tenant defendants held a tenancy under them comprising an area of 980 bighas of land, in respect of which the rent of Rs. 627-13-0, as mentioned above was payable annually.

2. The only defence of the contesting defendants to the claim for rent as made by the plaintiffs was that the plaintiffs had dispossessed them from portions of the land in respect of which rent as claimed in the suit was payable, and substantially interfered with their possession. On that defence, it was asserted by the tenant defendants that there should be total suspension of rent. As it has been stated in the judgment of the trial Court, no evidence was adduced in support of the plea of dispossession from any portion of the lands appertaining to the tenancy in respect of which rent was claimed. It was however urged on the side of the contesting defendants that the facts found and the reasons given in the judgment in a suit for rent for a previous period instituted by the plaintiffs in 1919, should be adopted in the present case.

3. It was contended that the question of dispossession of the tenant defendants should be treated as one concluded by the judgment in the previous suit of 1919, Ex. 0. in the case. The trial Court refused to accept the plea of res judicata raised by the tenant defendants, as indicated above; and rejecting the plea of dispossession as raised by them passed a decree in favour of the plaintiffs. A

decree was passed in favour of the plaintiffs for recovery of arrears of rent as claimed in the suit. On appeal by the contesting defendants, the decision and decree of the trial Court was reversed by the Court of Appeal below, on the ground that the judgment in the previous rent suit of 1919 operated as *res judicata* against the plaintiffs, on the question of the dispossession by the plaintiffs, and that regard to the position that the *kabuliat* (Ex. 1 in the case) was held in the previous suit of 1919 to be one which had not been acted upon and, there were no material before the Court, on which a decree could be passed in favour of the plaintiffs apportioning the rent payable to them by the tenant defendants. According to the lower appellate Court, the entire rental had to be suspended for the period in suit. The plaintiffs appealed to this Court.

4. It requires to be noticed that after the decision of the previous suit of 1919, there was the final publication of the Record-of-Rights in the settlement proceedings in 1925; and according to the entry in the finally published Record-of-Rights the tenant defendants were in possession of 333.37 acres of land, equivalent to more than 1000 bighas; the *jama* recorded in respect of the lands in possession of the tenants defendants was Rs. 627-13-0. In the suit for rent giving rise to this appeal, the tenant defendants claimed suspension of rent on the ground of dispossession from a part of the tenancy held by them. The onus was on the defendants to prove dispossession and the extent of eviction, even though suspension of rent was allowed on the ground of dispossession in a suit for rent for a previous period. It was for the tenant defendants to prove affirmatively, that the earlier dispossession continued down to the period for which rent was claimed in the present suit. The onus was not on the plaintiffs landlords to establish that the tenants had been restored to possession: See in this connexion *Satish Chandra Pal v. Hrishikesh Law*, 1933 Cal 290. Furthermore in the case before us, the entry in the finally published Record-of-Rights, at the date subsequent to the period covered by the previous suit for rent instituted in 1919, made it incumbent upon the tenant defendants to rebut the presumption arising in favour of the plaintiffs that there was no dispossession of the tenants from any portion of the tenancy comprising 980 bighas of land in respect of which rent was claimed. The tenant defendants having failed to make out any case for any suspension of rent payable by them, the plaintiffs were entitled to a decree for rent claimed by them in the suit. In the above view of the case the decision of the Court of Appeal below and decree passed by it, dismissing the plaintiffs' suit must be set aside, and the decree passed by the trial Court in favour of the plaintiffs, appellants in the Court, restored. In the result therefore, this appeal is allowed, and the decree passed by the Court of first instance in favour of the appellants is restored. The plaintiffs-appellants are entitled to realise their costs in the litigation including the costs in this appeal, from the tenant defendants, respondents in this appeal.