

(1911) 06 CAL CK 0006

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2278 of 1908

Kali Sundari Debya and Others

APPELLANT

Vs

Girija Sankar Sanyal

RESPONDENT

Date of Decision : 20-06-1911

Acts Referred:

Citation : (1911) 06 CAL CK 0006

Final Decision : Allowed

Judgement

1. This is an appeal by Defendants Nos. 1 to 10 in a suit purporting to be brought by the Plaintiff under sec. 106 of the Bengal Tenancy Act. Both the Courts below have decided in favour of the Plaintiff declaring his right and title to the disputed lands and ordering them to be left out of the settlement proceedings. The dispute arises in consequence of beware proceedings and is, shortly, whether the disputed lands appertain to Saham No. 4 allotted to the Plaintiff or to Saham No. 9 subsequently allotted to Kali Sundari whose tenants the other Defendants Nos. 2 to 10 are. Although the plaint is headed " under sec. 106 of the Bengal Tenancy Act, VIII of 1885," it contains no allegations appropriate, to a suit under that section. It is in its form and in the relief claimed a title suit, in which all that the Plaintiff asks for is possession by ejectment of the Defendants. No claim is preferred for the correction of any entry in the record-of-rights. The suit was however entertained by the Assistant Settlement Officer, who held that the suit was maintainable in its present form. He noticed that there was no prayer for the correction of the records, but thought that this was immaterial. The matter went on appeal before the District Judge, who although he announced his intention of not looking into the title except incidentally in order that he might say nothing which might be prejudicial to the parties in subsequent proceedings, has in effect done nothing else. He eventually held that Kali Sundari was not in possession of the plots in question, but he has omitted to state at what date. This, of course, is all important. The Plaintiff's case is that Kali Sundari only got into possession of these plots on the date of Mr. Marr's order in February 1905, but he concedes that she has been in possession ever since. At the date therefore of the final

publication of the record-of-rights in March 1907, the entry recording her to be in possession was correct. The Plaintiff's true remedy was to bring a suit in the Civil Court and thus establish his title and obtain possession. The learned Pleader for the Plaintiff admitted that the present decree could not stand in its entirety, but he suggested that perhaps the last portion might be upheld, viz., " that the plots must be left out of settlement proceedings as falling within Saham No. 4 for the present." This is manifestly impossible.

2. The scope of a suit under sec. 106 was discussed in the case of Mohunt Padmalab Ramanuj Das v. Lukmi Rani 10 C. W. N. 8 (1907).. As between the landlords of neighboring estates the only question is as to possession and that must mean possession at the date of the final publication of the entry. The case of Jogendra Nath Ray v. Ktishna Pramoda Dasi 12 C. W. N. 1032 (1908). cited by the Plaintiff's pleader has no application to the present, and, moreover, has been twice dissented from. See Gulab Misser v. Kalanand Singh 14 C. W. N. 884 : s. C. 12 C. L. J. 107 (1910). and Pandab Dowati v. Ananda Kisun 14 C. W. N. 897: s. c. 12 C. L. J. 196 (1910). There are only two alternatives open to us, one to allow the appeal and dismiss the Plaintiff's suit, the other to remand the case for a retrial de novo after an appropriate amendment of the plaint. In the matter of time and expense it will be as easy for the Plaintiff to file a fresh suit in the proper Court as to have the present suit tried over again from the beginning. Moreover the real remedy which the Plaintiff seeks namely a declaration of his title and the ejectment of the Defendants from the disputed lands cannot be secured by a suit under sec. 106 of the Bengal Tenancy Act. We accordingly allow the appeal, set aside the decree of the lower Courts, and dismiss the Plaintiff's suit with costs throughout.