

(1916) 06 CAL CK 0062
In the Calcutta High Court

Kangali Dhubi

APPELLANT

Vs

Ichhamoyi Debi and Others

RESPONDENT

Date of Decision : 26-06-1916

Acts Referred:

Citation : 35 Ind. Cas. 840

Hon'ble Judges : Newbould, J;D. Chatterjee, J

Bench : Division Bench

Judgement

1. The facts out of which this appeal arises are shortly these.
2. The plaintiffs are rich men. The defendant has his residence on a small piece of land near their residence. The plaintiffs coveted this land, but they could not induce the defendant to give up the land in his possession. They at last entered into an agreement with the defendant and his landlords that they would give to the landlords another piece of land in similar right and take this land in taluki right, and that the defendant-appellant was to vacate the land on receipt of Rs. 60 as compensation for removing his huts and receive out of the land so given in exchange an equal piece of land with rights similar to those he previously had for the purpose of his residence. The landlords of the defendant, namely, Sarat and his brother were not originally made parties but subsequently, on the objection of the defendant, were added as parties.
3. The learned Muusif found that there was a tripartite agreement by which there was to be an exchange of land between the landlords of the defendant, Sarat and his brother on the one hand, and the plaintiff on the other, and the defendant-appellant was to vacate his huts on receipt of Its. 60 as compensation for the same and upon receiving from Sarat and his brother an equivalent quantity of land to the land given up by him and in similar right in exchange for this land. Although the learned Munsif found this tripartite agreement, he did not make any order against Sarat and his brother because there was no prayer in the plaint against them.

4. There was an appeal to the Subordinate Judge by the plaintiffs and the Subordinate Judge thought that the defendant was precluded by his pleading in the ease from arguing that the agreement was a tripartite one and that he had not received a part of the consideration. The learned Judge, however, finds from the testimony of Sarat that ""it appears that he agreed to give some lands to Kangali for his bari out of the land which the plaintiffs gave him," and this seems to us to be a very natural inference.

5. The defendant has, upon the facts, been living on this land for more than 30 years, and it cannot be expected that he would give up his home and hearth without getting an equivalent piece of land. We, therefore, take it that there was a tripartite agreement, although the learned Judge says that this must be taken as a separate agreement. But upon the facts of the case, as they appear on the evidence, we think that this was a tripartite agreement; and that in order to give full effect to it, Sarat and his co-sharer, that is, the landlord defendants must be compelled to give to the defendant an equal piece of land to that taken over by the plaintiffs from his possession.

6. The next question is in what right? It appears that the istifanama which was executed evidently with the knowledge of Sarat and his co-sharer contains the description of the defendant's holding as a joie. The document is not before us and as it is not before us, we take the statement of the title from the judgment of the learned Munsif.

7. We, therefore, direct that the heirs of Sarat and his brother, that is to say, Romesh Chandra Goswami and Shashi Kumar Goswami do execute in favour of the defendant a lease in jote right of land, equal in quantity to that which is covered by the istifanama, in a convenient part of the lands received by them in exchange from the plaintiffs, and deliver him possession of the same within one month from the arrival of the record in the Munsif's Court, of which notice will be given to the parties. Upon the execution of such lease in jote right and upon delivery of possession to the defendant of that land, the plaintiffs will recover from him the land in suit; but after the delivery of possession to him of the land covered by the lease directed by us to be given by Romesh and Shashi, the defendant will have three months' time in the cold season for the purpose of removing and re-building his huts.

8. The learned Vakil for the respondent very properly gives up all claim for mesne profits. Under the circumstances, we make no order as to costs in this Court. The costs of the appellant in the lower Courts will be paid by Romesh and Shashi. The other parties will bear their own costs.