
(1915) 04 CAL CK 0034
In the Calcutta High Court

Kartic Mandal

APPELLANT

Vs

Bama Charan Mandal and Another

RESPONDENT

Date of Decision : 16-04-1915

Acts Referred:

Citation : 29 Ind. Cas. 502

Hon'ble Judges : Newbould, J;Chapman, J

Bench : Division Bench

Judgement

1. The plaintiff's case was that he had obtained a settlement from defendant No. 3, who was a raiyat and that upon his going to a portion of the land of which he had obtained the settlement, he was opposed by defendants Nos. 1 and 2. He, therefore, brought this suit for ejectment of defendants Nos. 3 and 2. The plaintiff claimed under a lease, the term of which is described by the expression putra poutradhi kramay." The lease is, therefore, for a term exceeding nine years and having regard to the case of Jarip Khan v. Durfa Bawa 15 Ind. Cas. 476 : 17 C.W.N. 59 : 16 C.L.J. 144 the document was not admissible in evidence and could not have operated to create any title in the plaintiff. The lower Appellate Court, however, decreed the plaintiff's suit.

2. On behalf of the respondents the difficulty is sought to be got over in three ways. Firstly, it is said that the plaintiff was entitled to adduce evidence irrespective of the document to prove his tenancy. This evidence, it is said, consists, in the present case, of an admission by defendant No. 3 that he had made the lease, that he took an adequate selami and also that the plaintiff seemed to have obtained possession of the remainder of the land covered by the lease. If the admission of defendant No. 3 could be used against defendants Nos. 1 and 2, we are of opinion that this is evidence relating to the transaction of the lease and that there being a document as evidence of that transaction, the oral evidence is not admissible. We do not think that it is sufficient, to prove the plaintiff's tenancy, to show that he is as in possession of other lands covered by the lease and we note that there does not appear to have been any evidence

that the plaintiff was in such a possession.

3. It is then contended that it would be possible for the plaintiff to prove that there was an oral agreement by defendant No. 3 to create a tenancy. There does not appear to have been any evidence, oral or documentary, other than the evidence of the transaction--the transaction which could only be proved by the document of the lease.

4. It is then contended that the lease is not a perpetual lease. This contention cannot prevail having regard to the expression "putra poutradhi kramay."

5. The appeal, is, therefore, allowed, the judgment and decree of the lower Appellate Court is set aside and the plaintiff's suit is dismissed with costs in all Courts.