

(1897) 09 CAL CK 0014
In the Calcutta High Court

Kedar Nath Bose and Others

APPELLANT

Vs

Prohlad Teor and Others

RESPONDENT

Date of Decision : 01-09-1897

Acts Referred:

Citation : (1898) ILR (Cal) 302

Hon'ble Judges : Francis William Maclean, C.J.; Banerjee, J

Bench : Division Bench

Judgement

Maclean, C.J.—In this case the plaintiffs sue to recover from the defendants certain plots of land, a portion of which is covered with water. The defence was that these plots and expanse of water were included in a certain lease from the zemindar who is a defendant in the case, and who is a common lessor both of the plaintiffs and the defendants. It has been found as a fact by the lower Court that these plots of land and expanse of water are not included in the defendants' lease. That being so, the defendants fall back upon the contention that these plots belonged to their zemindar, the zemindar who was their lessor; that they have encroached upon these plots of their landlord, and that having so encroached upon his lands they are entitled to be treated as between themselves and their landlord as his tenants, not only of the land originally included in the lease, but also of this land and expanse of water upon which they have encroached.

2. That no doubt is their present contention, although that is not the contention they set up in their written statement. This contention is doubtless suggested by the exigencies of the appellants' case, the Court below having found that the plots in question were not included in the appellants' lease. What we have to consider is, whether, in point of law, such contention can prevail. I think not, and I do not think I can do better than adopt, as I do, the language of Sir Richard Garth in the case of Nuddyar Chand Shaha v. Meajan ILR (1884) Cal. 820 in which, in delivering the judgment of the Court, he says: "It would indeed seem strange if, as a matter of law, a tenant were allowed, without his landlord's

permission, to appropriate any land which adjoins his own tenure, and then when his landlord complained of the trespass, and required him to give the land up, he were allowed to take advantage of his own wrong, and insist upon retaining possession of it until the expiration of his tenure." Now, although the zemindar in this case is not the plaintiff, he is a defendant, and he supports the case of the plaintiff's who are tenants of the land in dispute, under the lease granted to them.

3. Reliance has been placed by the learned Vakil for the appellant upon the law as laid down in the case of *Gooroo Doss Roy v. Issur Chunder Bose* (1874) 22 W. R. 246. I think the rule is laid down there too broadly, and I gather that the Court in the case of *Nuddyar Chand Shaha v. Meajan* ILR (1884) Cal. 820 was also of that opinion. In fact the Judges who decided the latter case seem to have been so much impressed with the effect of that ruling that they apparently consulted Mr. Justice Mitter, who was one of the Judges who decided the case of *Gooroo Doss Roy v. Issur Chunder Bose* (1874) 22 W. R. 246, for I find this passage in the judgment of the Court ILR Cal. 882: "We have consulted our brother Mitter as to this," that is as to the ruling in the case of *Gooroo Doss Roy v. Issur Chunder Bose* (1874) 22 W. R. 246 "and we find that it was by no means the intention of the Court in that case to lay down the rule thus broadly." As regards the case of *Gooroo Doss Roy v. Issur Chunder Bose* (1874) 22 W. R. 246 I am quite unable to agree with what the Court there lays down as to what is the rule of English law in cases of encroachment by a tenant. I allude to the passage in which Mr. Justice Markby says; "The true presumption as to encroachments made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure and form part thereof, for the benefit of the tenant so long as the original holding continues, and afterwards for the benefit of his landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit." If that be intended to lay down the rule of English law upon the point I respectfully dissent from it. The rule as there laid down is applicable to cases where the encroachment is upon waste land or land of third parties, but I am not aware of any authority in the English Courts which lays down that rule as applicable to the case of an encroachment by a tenant on other lands of his own landlord, or that if such encroachment be made the tenant can by that encroachment constitute himself the tenant of his landlord of the land he has encroached upon. It strikes me as an odd result that a tenant of plots A and B can by encroaching on plot C which also belongs to his landlord successfully claim by that action on his part to be entitled as between himself and his landlord to be treated by the latter as the tenant of the plot C; in other words by his own wrongful act to force himself upon his landlord *nolens volens* as tenant of plot C. I am aware of no authority for such a proposition, nor do I regard the proposition as in accordance with law. The appeal on this point of law fails and must be dismissed with costs.

Banerjee, J.

4. I am of the same opinion. I only wish to add this, that where a tenant encroaches upon the land of his landlord, though the landlord may, if he chooses, treat him as a tenant in respect of the land encroached upon, the tenant has no right to compel the landlord against his will to accept him as a tenant in respect of that land. No authority has been cited in support of the contention that the tenant has such a right, and it would be contrary to reason and common sense to hold that a tenant has that right.