

(1886) 12 CAL CK 0002
In the Calcutta High Court

Kristo Nath Koondoo and Others

APPELLANT

Vs

T.F. Brown and Others

RESPONDENT

Date of Decision : 20-12-1886

Acts Referred:

Citation : (1887) ILR (Cal) 176

Hon'ble Judges : Trevelyan, J

Bench : Single Bench

Judgement

Trevelyan, J.—The main object of this suit is to obtain possession of the premises in which the business of T.P. Brown and Company, Limited, was generally carried on. At the date of the institution of this suit those premises were in the possession of the Official Liquidator of that Company.

2. On the 16th of December, 1874, Gungapersaud the then owner of the premises, leased them to Mr. T.F. Brown, who is a defendant in this case, for a term of 15 years, commencing on the 1st of January 1875 at a monthly rent of Rs. 210.

3. By a subsequent verbal agreement Mr. Brown undertook to pay an additional rent of Rs. 2 a month.

4. On the 9th of August 1878 Gungapersaud conveyed to Gobind Ohunder Koondoo and the plaintiff Kristo Nath Koondoo, their heirs, representatives and assigns all his interest in the property in question.

5. Mr. Brown then paid the rent to these two Koondos. On the 13th of April, 1879, Gobind Chunder Koondoo died leaving four sons who are the plaintiffs in this suit. Mr. Brown then paid the rent to Kristo Nath Koondoo and the sons of Gobind Chunder Koondoo.

6. In April, 1882, Mr. Brown formed his business into a limited company, but the plaintiffs recognized the company as their tenants.

7. No rent since that, which fell due on the 15th of September, 1885, has been paid.

8. The plaintiffs now claim possession of the premises under the proviso for re-entry contained in the lease. They also claim rent from the defendant Brown, and damages for use and occupation against the defendant Cowie, who is the Official Liquidator. The issues raised by Counsel were as follows:

(1) Are the plaintiffs entitled to take advantage of the proviso for reentry contained in the lease ?

(2) Has the tenancy of T.P. Brown under the lease been determined, and if so, at what time, and by what means ?

(3) Whether, if the lease was in fact determined, forfeiture was not waived ?

(4) Did Mr. Cowie enter into possession otherwise than as Official Liquidator of the Company ?

9. On the first issue I think that I must find in favour of the plaintiffs. The proviso for re-entry contained in the lease is as follows : "Provided also and in addition to the remedy by distress lastly herein reserved to the said Gungapersaud, it is hereby agreed that if the said monthly rent hereby reserved, or any part thereof, shall not be paid on the days and times and in the manner hereinbefore mentioned, or if any of the covenants and agreements herein contained on the lessee's part shall not be by him well and truly observed, performed and kept according to the true intent and meaning of these presents, then and thenceforth it shall be lawful for the said Gungapersaud into and upon the said messuage and premises or any part thereof in the name of the whole to re-enter, and the same to have again, re-possess and enjoy as if this lease had never been made or executed, anything herein contained to the contrary thereof in anywise notwithstanding."

10. It is contended that Gungapersaud alone could take advantage of this provision, and that his heirs, representatives and assigns, as they are not named, cannot exercise any power of re-entry.

11. The question turns upon the terms of Statute 32, Henry VIII, Cap. 34. It is not an easy one, but after giving to it a great deal of consideration it seems to me that, although the power of re-entry is reserved only to Gungapersaud by the lease, his heirs and assigns can take advantage of such a condition. I think there is no doubt that the words of the operative part of the Statute are wide enough to cover the present case. There is no doubt also that the words of the preamble are limited to the case where the deed gave the remedy to the heirs and assigns.

12. It is almost impossible to deduce from the cases any very clear rule as to how far a preamble runs down a Statute, but I think the tendency of the cases is not to give effect to the preamble unless it be quite clear that the Legislature can have only had in contemplation the particular mischief to which the preamble

relates, and the words of the operative part are ambiguous. In many cases it has been held that the remedy provided in the Statute has been intended to be more extensive than was necessary to get rid of the mischief to which the preamble relates.

13. Mr. Pugh relies on the authority of certain cases which have held that this Statute applies only to leases under seal, and he contends that the operative portion of this Statute must be confined entirely to the cases mentioned in the preamble. In those cases, and in others to which I have referred, the question seems to have been taken as settled and to have been decided without argument. I take it that the original reason for this decision must have been that, at the time of the Statute, the law required the leases referred to in the preamble of the Statute to be under seal. If this be so, these cases are of no assistance to me in the present question.

14. Unless I see any good reason to the contrary I ought to give full effect to the operative part of the Statute.

15. The plaintiffs are, I think, under the Statute, entitled to the benefits of the proviso for re-entry. The next question is as to the forfeiture.

16. In order that there may be a forfeiture, there must, under the authorities, be a demand of the rent on the last day and not on any other day before or afterwards. I have looked carefully through the evidence and cannot find that there is any evidence sufficient to satisfy the requirements of the law. The evidence is this: Mr. Brown says: "The Liquidator did not pay the rent, and they applied to me for rent. They received cheques all along from the Company for the rent. He did not pay and I have paid no rent since." He afterwards says: "Subsequently they refused to receive rent from the Liquidator."

17. Mothura Nath Sircar, the head gomastah of the plaintiffs, says:

18. "I did not go there after January to demand rent. Bills are usually made out at the end of every month. The bills were made out after the month of January, but bills were made out in August. I drew the bills for September, October, November, and December at Rs. 212 a month. I did not make out any other bills because we did not get any money. We don't get money without making out bills." This is the whole evidence on the subject. It shows, I think, a demand of rent for each month up to and including December. As by a subsequent demand of rent the breaches on account of the preceding months were waived, the only question is whether there was such a demand of December's rent as to work a forfeiture. I do not think there is any evidence from which I can hold that the requirements of the law have been fulfilled. I must therefore decide the second issue against the plaintiffs, and must dismiss the suit with costs on scale No. 2 as against the defendants other than Mr. Brown; there must be a decree against Mr. Brown for six months rent at Rs. 212 per month, i.e., for Rs. 1,272.