
(1926) 03 CAL CK 0020
In the Calcutta High Court

Kshetra Nath Dutt and Others

APPELLANT

Vs

Nityananda Mondal and Others

RESPONDENT

Date of Decision : 24-03-1926

Acts Referred:

Bengal Tenancy Act, 1885 — Section 49

Citation : 96 Ind. Cas. 667

Hon'ble Judges : Page, J;Cuming, J

Bench : Division Bench

Judgement

Cuming, J.—In the suit out of which this appeal has arisen the plaintiff sued to eject the defendants on the ground that they held the lands under the plaintiffs as bargadars and that they had denied their right to receive the landlords' share of crops, had taken the entire produce and thus dispossessed the plaintiffs.

2. The defendants contended on the contrary that they were not bargadars but they held the lands on a money rent.

3. The first Court held that the plaintiffs were entitled to evict the defendants, He found that the defendants had denied that they held the lands in barga under the plaintiffs and that they having thus denied the plaintiffs' title, the plaintiffs were entitled to get khas possession. In appeal the finding was reversed. The lower Appellate Court found that the defendants were bargadars in respect of some of the plots (plots A, B and X), and that they held at a money rent in respect of the rest of the lands. He further found that they were not labourers in respect of the lands but tenants and that they had not denied the plaintiffs' title and hence the plaintiffs had no ground for evicting them.

4. In appeal it has been argued that as it was the defendants' case that they held the lands at a money rent and not as bargadars as soon as the Court held that they were bargadars in respect of a portion of the lands in dispute, the plaintiffs were entitled to khas possession of that portion of the lands which it was held they held as bargadars and not on a money rent. But the mere fact that

they held as bargadars would not entitle the plaintiffs of itself to eject them. The plaintiffs do not suggest in their plaint that as bargadars they were not tenants but day labourers. That is nowhere suggested in the plaint. A bargadar may be a day labourer or he may be a tenant and the plaintiffs do not suggest in the plaint that they were day labourers. The mere fact that they held on produce rent being bargadars will not give the plaintiffs a right to eject them. They will still come within the provisions of Section 49 of the Bengal Tenancy Act if they are tenants. The learned Vakil contends that a bargadar is presumed to be a day labourer until the contrary is shown and in support of his somewhat startling proposition he refers us to the case of Kade Mondal v. Ahadali Molla 6 Ind. Cas. 594 : C.W.N. 629. The decision to which the learned Vakil has referred us is certainly no authority for the proposition which he has asked us to accept. All that that case decides is that in that particular case the relationship of landlord and tenant did not exist between the parties. The finding of the learned Subordinate Judge that the defendants were not day labourers in respect of the lands and "that they did not deny the plaintiffs" title really concludes this appeal. The learned Vakil for the appellants has, however, argued further that the learned Judge relied on a certain compromise decree which was come to between Rammani, the predecessor-in-interest of the present plaintiffs and the defendants. He urges that the learned Judge was not entitled to come to the finding that this decree was not fraudulent. He contends that there is no evidence that Rammani had any independent advice or that she really assented to the solenamah. The facts are these: the decree on the solenamah was passed so long ago as 1887 and one of the clauses of this solenamah was that the rent was to be enhanced from Rs. 7-12 to Rs. 10. Rent has been paid at the solenamah rate for some 40 years. The learned Judge was quite entitled to come to the conclusion that he did that this decree was not a fraudulent

5. The result, therefore, is that this appeal must be dismissed with costs.

6. The cross-objection not being pressed is also dismissed but without costs.

Page, J.

7. I agree.