
(1896) 07 CAL CK 0004

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 461 of 1895

Lal Mamud Mandal and others

APPELLANT

Vs

Arbullah Sheikh and others

RESPONDENT

Date of Decision : 31-07-1896

Acts Referred:

Citation : (1896) 07 CAL CK 0004

Judgement

Macpherson, J.—The land which is the subject of this suit was admittedly the raiyati holding of the third defendant, Sholamdy Sheik. The plaintiff's case is that Sholamdy, in Kartik 1294, surrendered his holding to his landlords the 4th and 5th defendants, and left the land and the village in which he resided, and that thereupon they obtained a settlement from the landlords and held possession as tenants till Jeth 1299, when they were dispossessed by the first two defendants on the strength of a decree obtained u/s 9 of the Specific Relief Act. This suit is to recover possession on their title as tenants. It is denied that Sholamdy had an occupancy or a transferable right. The first defendant pleaded a purchase of the holding from Sholamdy in Aghan 1294, and subsequent recognition as a tenant by the landlord defendants. He denied the alleged settlement with the plaintiffs and the possession of the latter. The third and fourth defendants also put separate written statements. The former admitted a relinquishment of the holding but denied the sale to the first defendant. The latter supported the plaintiffs' case.

2. On the issues framed to meet these contentions, the First Court found that Sholamdy had an occupancy, but not a transferable, right in the holding; that he sold the holding to the first defendant who was not recognized by the landlord defendants as tenant and obtained no settlement from them; that there was no surrender of the holding, but that when Sholamdy abandoned it after the sale it was settled with the plaintiffs. On those findings he gave the plaintiffs a decree for possession. The second defendant, who is said to be an under tenant of the first defendant, alone appealed.

3. The Subordinate Judge found that Sholamdy did not surrender his holding and on that ground alone, without deciding anything else, decreed the appeal and dismissed the suit. He held that, even if the holding was abandoned by Sholamdy and settle with the plaintiffs the entry by the landlords was unlawful, and the settlement of no avail, because the landlord, before entry, did not file in the Collector's office the notice prescribed by the second clause on section 87 of the Tenancy Act. The consequence of the omission was, he considered, that the plaintiffs acquired no valid title even if the holding, having been abandoned by Shalamdy, was settled with them.

4. If this view of the law is correct, a notice u/s 87 is an essential preliminary to an entry by the landlord in every case in which a raiyat has abandoned his holding and the notice, and the notice only, terminates the tenancy. The decision can only be supported on the ground that, notwithstanding an admitted abandonment of some kind, Sholamdy's tenancy still continues, and that the landlord could not on that account settle the land with the plaintiffs, or anyone else.

5. It is not easy to understand sec. 87 but it cannot bear any such construction as that. It does not purport to define an abandonment, or to give an exhaustive description of the acts which constitute an abandonment, and we think it was not intended to apply to a case in which a raiyat transferred, and made over the possession of, his holding to some one else. That, if he had no right to make the transfer, it may or may not in law amount to an abandonment on his part, but it does not seem to be an act contemplated or provided for in the section. Certain acts are recited which may, but do not necessarily, amount to an abandonment, and it is possible to conceive a case in which a raiyat who had committed all those acts might still be able to persuade the Court that he had not voluntarily abandoned his holding, notwithstanding that the landlord had after notice duly entered under the section--When those acts are committed the landlord is authorized to enter on the holding, but before doing so, he is required to file in the Collector's office a notice of the abandonment and entry. The entry is, however, subject to any suit which the raiyat may bring to recover possession within a specified period from the date of the publication of the notice--a publication for which, we may observe, he is not in any way responsible. When such a suit is brought, the Court must determine whether there was or was not a voluntary abandonment, and that involves the determination of what a voluntary abandonment is.

6. It may be a question whether a landlord, who enters without notice, enters within the section. But supposing he enters without notice, his entry may amount to a dispossession of the raiyat, and if the section did not apply, any suit which the raiyat brought to recover possession would be governed by the law of limitation, contained in Schedule III of the Tenancy Act, or in the general Limitation Act. It might then be a question when the dispossession occurred, or when the possession of the landlord became adverse to the tenant, and that the

Court would have to determine according to the circumstances of each case. The publication or the notice fixes the period of limitation and is a safeguard to the landlord; the effect of non-publication might be to extend the period of limitation, It is not, however, the notice which terminates the tenancy but the voluntary abandonment coupled with acts on the part of the landlord (not necessarily limited to the giving of notice) indicating that he considered the tenancy at an end, and it would be for the Court in each case to determine whether the tenancy had terminated.

7. If the Subordinate Judge is right, a landlord entering before notice, could not at any time resist the raiyat's claim to recover possession, although the Court might find that there was a complete abandonment and a clear intention on both sides to put an end to the tenancy The Act lays down no such rule as that.

8. The decision must be set aside and the case remanded in order that the facts may be determined and the appeal disposed of. We do not think it right to decide in anticipation, any questions of law which may arise. It was argued that the Subordinate Judge could not, on the appeal of the second defendant alone, dismiss the whole suit. This must depend to some extent upon the facts found, and those facts we cannot decide. If the second defendant is in possession he can certainly resist the plaintiff's claim to eject him. The appellant will get the costs of this Appeal, the costs of the Lower Court will abide the result.