
(1896) 08 CAL CK 0006

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 469 of 1895

Lala Sheo Charan Lal

APPELLANT

Vs

Lala Purbhoo Dayal and others

RESPONDENT

Date of Decision : 10-08-1896

Acts Referred:

Citation : (1896) 08 CAL CK 0006

Judgement

1. This suit has been brought to eject the defendants who hold under a thika granted to them by one Purbhoo Dayal. At the time that he granted this thika Purbhoo Dayal was in possession of a 9 annas 8 pie share of the village including the one anna now in suit, and he granted a thika of that 9 annas 8 pie share. But in a suit which was subsequently brought against him by the vendor of the plaintiff it was held that he was wrongly in possession of the one anna, and had no interest in it. The plaintiff's vendor, however, accepted rent from the defendants, and moreover, by his conduct showed that he intended to consider himself bound by the terms of the pattah which had been granted by Purbhoo Dayal. No new lease, however, was executed by him. The question before us is whether the plaintiff is, by the act of his vendor, prevented from disputing the right of the defendants to hold under the pattah granted by Purbhoo Dayal. By section 107 of the Transfer of Property Act a lease from year to year, or for any term exceeding one year can be made only by a registered instrument. It is contended that the plaintiff's vendor could ratify the lease given by Purbhoo Dayal; but no question of ratification could arise here. The lease did not purport to be given on behalf of the plaintiff's vendor or of any predecessor of his in interest. He was not in any way privy to the lease. It was given by his adversary, who was keeping him out of possession. The cases cited to us, are all cases where the persons who granted the lease had a limited interest, and his acts were voidable at the instance of the person who ratified the lease. As there has been no privity in the present case, we think no question of ratification arises, and if we were to hold that by acceptance of the terms of the old lease the relationship of landlord and tenant was created, we would, in fact, be deciding

against the terms of section 107. It follows that we must declare that the lease granted by Purbhoo Dayal is not binding on the plaintiff.

2. The plaintiff is entitled to rent at the rate mentioned in the thika pattah for the period of dispossession, as damages,

3. We therefore set aside the decree of the District Judge, and direct a decree as abovementioned. We make no order as to costs.