
(1919) 05 CAL CK 0062
In the Calcutta High Court

Madan Mondal Gochi and Others

APPELLANT

Vs

Tarini Chandra Banbrjee and Others

RESPONDENT

Date of Decision : 29-05-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 85, 85(2)

Citation : 54 Ind. Cas. 625

Hon'ble Judges : Newbould, J

Bench : Single Bench

Judgement

Newbould, J.—This appeal arises out of a suit to recover possession of certain land on establishment of the plaintiff's title. The plaintiff claimed by virtue of a sub-lease for an indefinite period granted by a person having a right of occupancy in the land. The Munsif dismissed the suit, holding that the lease to the plaintiff, in contravention of Section 85 of the Bengal Tenancy Act, was void. On appeal the learned Subordinate Judge of Jessore granted the plaintiff a decree. In my opinion, the learned Munsif was right. The questions as to the validity of a lease granted by a raiyat in contravention of the provisions of Section 85, Clause (2), of the Bengal Tenancy Act are discussed at length in the judgment of my learned brother Mr. Justice Beachcroft in the case of Chandi Charan Nath v. Samla Bibi 44 Ind. Cas. 254 : 22 C.W.N. 179 : 28 C.L.J. 91. That was a Letters Patent appeal from a decision of my own.

2. It is contended on behalf of the respondents that this case can be distinguished, because there was a finding in the first Court that the plaintiff had proved the consent to the sub-lease of the superior landlord. The lower Appellate Court having decided in favour of the respondents came to no decision on this point But even assuming that the landlord consented, the plaintiff's position is not improved. Clause (2), Section 85, is a statutory bar to the registration of a sublease by a raiyat which purports to create a term exceeding nine years, The consent of the landlord cannot empower the registration authorities to register certain Teases in contravention of the statutory provisions. If such a lease is

registered contrary to the provisions of the Statute, it must be regarded as unregistered and is inadmissible in evidence : consequently the plaintiff is not in a position to prove the lease. In the present case it is found by the lower Appellate Court that the plaintiff was never in possession, so no question arises as to the validity of the plaintiff's tenancy independent of his lease. I cannot accept the contention on behalf of the respondents that the consent of the landlord makes this case distinguishable from the case cited above. It is also contended on behalf of the appellants that this suit is barred by the special law of limitation. As the plaintiff was never in possession, it seems doubtful whether Article 3 of Schedule III of the Bengal Tenancy Act can apply to the present case. It is contended that the expression "dispossession" in the 3rd column of the schedule must be taken to have the same meaning as keeping out of possession. As, however, the appellant succeeds on his first point it is not necessary to decide this point. The appeal is accordingly decreed with costs in this and the lower Appellate Court. The decree of the Munsif dismissing the suit is restored.

3. It was also argued that though the document was inadmissible in evidence, it was admissible for collateral purposes. But in this case, it being a suit for ejectment, there is no question on which the lease can be relevant for a collateral purpose.

4. The plaintiff has no title under the lease and being out of possession he can have no title apart from the lease.