
(1902) 06 CAL CK 0030

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 226 of 1900

Moharani Beni Pershad Koeri

APPELLANT

Vs

Goberdhan Koeri

RESPONDENT

Date of Decision : 20-06-1902

Acts Referred:

Citation : (1902) 06 CAL CK 0030

Final Decision : Allowed

Judgement

1. This was an appeal against a decision of the learned District Judge of Shahabad, allowing an appeal against a decision of the Munsif of Buxar. The only question which arises in the case is : Was the portion occupied by the Defendant No. 4 separated from the entire holding? The suit was for rent and was brought against five Defendants jointly.

2. The defence of Defendant No. 4, who is the Appellant before us, was that the landlord had accepted from him a separate rent for his portion of the holding and that therefore a decree for the whole rent could not be obtained against the other tenants jointly with him.

3. The Munsif found in favour of the Plaintiff.

4. The learned District Judge reversed the finding of the Munsif. He says in his judgment that the Plaintiff, that is, the landlord who was not bound to recognise the purchase by the Defendant No. 4, has elected to do so; that she has been realizing rent from the Defendant, and has been recognising him as a tenant by making him a Defendant in the present case.

5. We should not affirm the proposition that where a holding is in the occupation of several tenants at one entire rental, the fact that the landlord's tehsildar has accepted from the various tenants proportionate parts of the rent binds the landlord to recognise a separation of the tenancy. On the other hand, if it were proved that the landlord granted receipts showing that a separate jama had been fixed for the holding alleged to have been severed, it might be well argued on

behalf of the tenant that the landlord was estopped from denying that a separate tenancy had been created. But in the present case the Appellant is debarred from using that argument as he did not at the hearing produce any of the rent-receipts which he says he received during the 11 or 12 years he occupied the land in question. The story that he gives of his having lost the receipts is disbelieved. In our opinion the learned Judge overlooked the inference which was to be drawn from his refusal to produce the receipts, namely, that they would not support the case that a separate jama had been accepted from him by the landlord. We think therefore that the finding of the District Judge cannot be supported. In our opinion he should have considered the proper inference to be drawn from the non-production of the rent-receipts; and there is a further difficulty in the way of the tenant and that is this, that there is no evidence--at any rate there is none on the record--which connects the landlord with the receipt of any proportionate rate of rent by the tehsildar. And the learned Judge, without that evidence, could not hold that the tehsildar could bind the landlord. In these circumstances the appeal must be allowed and the decree of the Court of the Munsif against the Defendants jointly must be restored with costs.