

(1917) 04 CAL CK 0021
In the Calcutta High Court

Mohendra Nath Madak

APPELLANT

Vs

Paresh Chandra Ghosh and Satya Bhupal Bannerjee and
Others

RESPONDENT

Date of Decision : 23-04-1917

Acts Referred:

Citation : 40 Ind. Cas. 506

Hon'ble Judges : Newbould, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal by the defendant from a decision of the learned Additional District Judge of the 24-Pergannas, dated the 22nd December 1913, affirming the decision of the third Munsif at Alipore. The suit was brought to recover the rent in arrears for the years 1311 to 1314. B.S. The amount claimed was Rs. 54 2-5. The suit was instituted as long ago as the year 1908. So far about nine years, this litigation has been pending. Both the Courts below have decreed the suit. The defendant has appealed to this Court.

2. Two points have been raised in this appeal. The first point is that the plaintiff had no right to maintain this suit for rent on the ground that there had been an assignment of his interest in the land. The document under which the property was sold is Exhibit A on the record. It is a document in the English language and in the English form being an indenture expressly made between the plaintiff of the one part and the purchaser of the other part. The document purports to transfer to the purchaser all claims for rent in arrears in the suit then pending. It authorized the purchaser, as the irrevocable attorney of the vendor, that is, the plaintiff, to continue and prosecute in the name of the present plaintiff the suit then in existence or any future suit with reference to the moneys and claims transferred by that document. It is quite clear that the sole object of the appointment of the attorney was to enable the suit to be continued in the name of the plaintiff without a new assignment being made and it does not matter to the defendant if he gets a perfectly good receipt when he pays the money to the

plaintiff notwithstanding this assignment. There is no force in that objection although I do not agree in the construction that the learned Judge has put on the appointment of the purchasers as the irrevocable attorney of the vendor.

3. The other point was that the plaintiff could not sue to recover his share of the rent only and that the suit ought to have been brought to recover the whole rent due to the plaintiff and the pro forma defendants. This point was not taken in the lower Appellate Court. In the primary Court, it was taken and the learned Judge in that Court found that the defendant's documents showed that the plaintiff's father brought a rent suit in respect of his separate share and that a cess-return was filed in respect of that share. That finding seems to have been assented to and I think it could not be challenged as the cess-return and the decree showed what is called in this country a separate collection. That finding made by the learned Judge of the primary Court was not challenged in the lower Appellate Court. Therefore, it is too late to raise it here. As a matter of fact, there is little doubt that the Munsif was right when he stated that this finding was arrived at on the cess-return and the decree passed in the other suit. The appeal fails and must be dismissed.

4. Babu Jogendra Nath Ghose who filed a vakalatnama in this appeal on behalf of the respondent says that he has no instruction. The appeal has, therefore, been treated as uncontested. We, therefore, make no order as to costs.

Newboold, J.

5. I agree.