
(1918) 11 CAL CK 0009
In the Calcutta High Court

Monmotha Nath Santra Madak

APPELLANT

Vs

Raja Peary Mohan Mukerjee and Others

RESPONDENT

Date of Decision : 28-11-1918

Acts Referred:

Citation : 52 Ind. Cas. 180

Hon'ble Judges : Walmsley, J; Ernest Fletcher, J

Bench : Division Bench

Judgement

No. 123 of 1917

1. This is an appeal against the decision of the learned Subordinate Judge, Hooghly, dated the 2nd November 1916, affirming the decision of the Munsif of Serampore. The plaintiff sued to recover possession of certain property. The property, which is paid to be homestead land, is in a town. The defendant No. 1 had been a tenant of this land for many years. He held, first of all, under two leases for a period of ten years each. Then he held over and has been holding over on the terms of the expired lease, so far as they are applicable to the tenancy created by the holding over. The view of the appellant is that he is entitled to a notice of six months expiring at the end of a year of tenancy. He has got no such right at all. If the case is governed by the general law, then as regards the homestead the tenancy would be prima facie the tenancy of a monthly tenant capable of being determined with a 15 days notice. If it is not, then the terms of the contract so far as they are applicable, must be taken to apply to the present case. The expired lease contained a proviso that the landlord might re-take possession on three months' notice. As a matter of fact, a six months' notice was served on the defendant. Such a notice was not provided for by the contract and the notice given in this case, which in fact extended over a period of six months, cannot be said to be unreasonable. No authority has been shown to suggest that a tenant holding over is entitled to a six months' notice expiring at the end of a year of tenancy. That would mean that a tenant who holds over for a week would be entitled to hold over for a year. The view of the

appellant's Vakil is that notice expiring at the end of a year of tenancy means that the holding over must be at least for one year or so. There is no support to such a proposition either in the text books or in the reports of oases. The only provision is that the notice must be reasonable. The defendant No. 1 was only entitled to a three months' notice under the terms of the contract, but, as a matter of fact, a six months' notice was served on him. There is no reason to interfere with the decision of the learned Subordinate Judge in this case. The present appeal, therefore, fails and must be dismissed with costs.

No. 555 of 1917.

2. This appeal is not pressed and is accordingly dismissed with costs.