
(1919) 01 CAL CK 0013
In the Calcutta High Court

Nibaran Chandra Mirdha

APPELLANT

Vs

Ram Charan Mandol and Others

RESPONDENT

Date of Decision : 17-01-1919

Acts Referred:

Citation : AIR 1919 Cal 345(1) : 51 Ind. Cas. 928

Hon'ble Judges : Teunon, J;Greaves, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff against the decision of the Additional District Judge of Jessore decreeing the appeal of the defendants.

2. The plaintiff's suit was to recover possession of certain jamas, The facts are briefly these:--The jamas in question originally belonged to seven co-sharers. Upon partition they were allotted to Shama Charan, and his widow Ambika Bewa leased them to the plaintiff in 1309. He held them until 1317 when he was dispossessed by defendants Nos. 1, 2 and 3, who are tenants of defendant No. 5, who is a co-sharer of defendant No. 7. Both the Courts have found that the co-sharers under whom the plaintiff claims are raiyats and that, therefore, the lease which the plaintiff put forward which was for a period of more than 9 years cannot be adduced in evidence. The learned Additional District Judge has held that this disposes of the suit, as he says that the plaintiff cannot succeed except by proof of title and that as he is not entitled to give this lease in evidence, he has failed to establish his title.

3. Now there is no doubt that upon the evidence and upon the findings of both Courts the plaintiff was in possession under Ambika Bewa and that he paid rent to her until he was dispossessed, and it seems to us that although the lease may not be given in evidence, there is no reason why the tenancy cannot be proved aliunde, as we think it has been, by possession and payment of rent to Ambika Bewa. We were referred to a decision in Jarip Khan v. Durfa Bewa 15 Ind. Cas. 476 ; 16 C.L.J. 141 ; 17 C.W.N. 59 as an authority that if a lease cannot be given in evidence, no oral evidence of the tenancy is admissible. But it has been held in

Gonesh Mondol v. Thanda Namasundrani 38 Ind. Cas. 489 ; 21 C.L.J. 539 that where a lease cannot be given in evidence in the circumstances already referred to, the "tenancy can be proved aliunde. It appears, therefore, to us that the decision of the Additional District Judge was wrong and that the plaintiff having established his tenancy by possession and payment of rent to Ambika Bewa, the learned Judge ought to have held that he was entitled to possession. the jamas for which he had sued.

4. Accordingly the appeal succeeds and the decree of the Munsif will be restored with costs in all Courts.