
(1898) 07 CAL CK 0025

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 72 of 1897

Nilmadhab Bose and others

APPELLANT

Vs

Ananta Ram Bagdi and others

RESPONDENT

Date of Decision : 06-07-1898

Acts Referred:

Citation : (1898) 07 CAL CK 0025

Final Decision : Allowed

Judgement

1. This appeal arises out of a suit brought by the Plaintiffs under the following circumstances :--

They are the owners in possession of a dur-putni taluk, and they allege that within this taluk there are certain chakran lands which were held by tenants on requital of services rendered by them, that, in respect of the lands in suit, the former tenant having abandoned the same a temporary settlement was made with the Defendant No. 1 for a term of two years at an annual jama of Rs. 30 odd; that in 1891 they sued him for the rents of 1896-97; but as he denied the relationship of landlord and tenant, the action was withdrawn; that subsequently in 1893 another suit was brought for the rent of the years 1298-99 in which again he denied the relationship of landlord and tenant. They obtained a decree in the first Court which was afterwards set aside on appeal, and the Plaintiffs' suit was dismissed, on the ground that there was no relationship of landlord and tenant, as alleged by the Defendant No. 1. The Plaintiffs accordingly bring this suit to recover khas possession of the land held by the Defendant for mesne profits and other reliefs.

In the written statement the Defendants repeated their objections regarding the rights of the Plaintiffs : they alleged that there was no relationship of landlord and tenant existing between the Plaintiffs and the Defendants; denied that the lands in suit were the mal and chakran lands of Plaintiffs, and so forth. In short the defence was a total denial of all the allegations in the plaint. The Defendants say:--"Neither the Plaintiffs nor their alleged predecessor did ever hold

possession of the land in suit either in khas or by realization of rent. The Plaintiffs had never, nor they have at present, any manner of right and possession in the said properties.

2. The third issue, framed by the Munsif material for the purposes of the present appeal, runs as follows :--" Whether the Plaintiffs are entitled to get khas possession of the property?

3. The Munsif in a lengthy judgment found all the facts in favour of the Plaintiffs regarding the land in suit mentioned in Schedule ka and being of opinion that the Defendants had no sort of right or title to the land in respect of which he found the Plaintiffs had succeeded in establishing their title, he gave the latter a decree for the recovery of possession; in other respects he dismissed the Plaintiffs' suit.

4. The Subordinate Judge, on appeal, has affirmed the Munsif's judgment so far as it dismisses the Plaintiffs' suit respecting the lands in Schedule khaw , but he modified the lower Court's decree with respect to the lands regarding which the Munsif had made a decree in the Plaintiffs' favour; in other words, he declared the Plaintiffs' title as landlord, but held that they were not entitled to recover khas possession. The Subordinate Judge says :--"As denial of Plaintiffs' title will not entail forfeiture of the tenant's rights under Bengal Tenancy Act, the Plaintiffs' claim for khas possession and wasilat will fail, and they will only recover possession subject to the tenancy of Respondent No. 1 and realization of rent after the dismissal of the rent-suit.

5. The case has been argued at considerable length in this Court, and we took time to consider the questions that were raised by the pleaders on both sides. We think this appeal must succeed.

6. The Subordinate Judge, on the authority of the case of Debiruddi I.L.R 17 Cal. 196, is of opinion that a denial of the relationship of landlord and tenant does not entail forfeiture of the tenant's rights. In that case the tenant had undoubtedly denied the Plaintiffs' right; but that denial was never given effect to by a decree of Court. In this case the Plaintiffs brought two successive suits for the recovery of rent. In the first, there was a denial of the relationship of landlord and tenant between the Plaintiffs and the Defendants, and in consequence thereof the suit was withdrawn. In the second suit the same objection was persisted in, and the Court found, as a fact, that there was no relationship of landlord and tenant. Proceeding upon that decree, the Plaintiffs' claim to recover possession of the land from one who denies that he holds under them. In this suit also the Defendant has taken the same objection, and has persisted in it from beginning to end. It seems to us that the cases in which it has been held that the denial of the relationship of landlord and tenant does not operate as forfeiture cannot apply to the present case; and we think that under the circumstances stated it would be giving to the principle enunciated in those cases a much wider scope than the learned Judges intended. It having been found that the land belonged to the Plaintiffs and it having been found in the previous suit that the Defendants

are not their tenants, we think it follows that the Defendants have no right to remain upon the land, and that this appeal must succeed. We accordingly set aside the decree of the Subordinate Judge in respect of the lands regarding which the Munsif gave a decree to the Plaintiffs and restore that of the Munsif with half the costs, the Respondent who is represented by Babu Prasanna Chandra Roy, being entitled to the other moiety in respect of the lands mentioned in Schedule khaw