

(1887) 08 CAL CK 0003
In the Calcutta High Court

Nilmony Dassy for Self and as Guardian of Bishu Doshayi and
Another

APPELLANT

Vs

Sonatun Doshayi and Others

RESPONDENT

Date of Decision : 05-08-1887

Acts Referred:

Citation : (1888) ILR (Cal) 17

Hon'ble Judges : O''Kinealy, J;Norris, J

Bench : Division Bench

Judgement

1. The facts of this case appear to be these: One Gopal Dolai, the husband of the plaintiff No. 1 in this suit and the brother of the minor plaintiffs Nos. 2 and 3, had either in or previous to the year 1290 obtained an occupancy right in respect of certain paddy lands. The suit was brought by the plaintiffs for recovery of possession of these lands from the defendants Nos. 1 and 2 upon the establishment of the plaintiffs' title; and the title they claimed was that of an occupancy ryot. It appears that no rent had been paid by the plaintiffs or Gopal, their predecessor, for this land for some four or five years previous to the year 1290; and it was admitted by the plaintiffs that neither they nor their predecessor Gopal had cultivated the lands since the year 1290. There was no distinct finding by the lower appellate Court as to when the plaintiffs or their predecessor had ceased to cultivate the lands. Upon the facts, as was have stated them, the Subordinate Judge, upon the authority of the case of Hem Chundra Chowdhari v. Chand Akund 12 C. 115 decided that the plaintiffs had at the time of bringing their suit no subsisting right of occupancy in the lands, as they had neglected or omitted to pay rent for some years before the institution of this suit. If the case to which the Subordinate Judge has alluded decides, as a matter of law, that the mere non-payment of rent will be sufficient of itself to warrant the Court in finding that the occupancy right has been lost, we think that the decision goes too far. But, speaking for myself, I do not think that the judgment goes to that extent. The judgment must be read in the light of the facts of the case. But we think that the Subordinate Judge ought to find as a

fact, whether at the time the suit was brought there was a subsisting right of occupancy, and for that purpose he ought to ascertain for what length of time the plaintiffs or their predecessor had ceased to cultivate the lands. As we have already pointed out, we think that the mere non-payment of rent taken by itself is not sufficient to warrant the Judge in coming to the conclusion, that there is no subsisting right of occupancy. But it may be that the fact that the plaintiffs had for so long a time ceased to cultivate the lands, coupled with the non-payment of rent, would be evidence upon which the Court might ultimately come to the conclusion that there had been a relinquishment of the right of occupancy. In the light of these remarks we remand the case to the lower appellate Court to find as a matter of fact whether at the time the suit was brought the plaintiffs had a subsisting right of occupancy.

2. We will keep the case on the file of this Court and direct the Subordinate Judge to return his finding within one week from the reopening of the Court after the ensuing vacation.

3. Costs will abide the result.