
(1919) 04 CAL CK 0026
In the Calcutta High Court

Nishi Kanta Dutta and Others

APPELLANT

Vs

Shashi Kanta Karmakar and Another

RESPONDENT

Date of Decision : 10-04-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 11

Citation : AIR 1919 Cal 405(1) : 52 Ind. Cas. 19

Hon'ble Judges : Asutosh Chandhuri, J

Bench : Single Bench

Judgement

Asutosh Chandhuri, J.—The plaintiffs sought to eject the defendants under the following circumstances. The father of defendant No. 1 got a nimhowla right in the lands in suit by a lease dated the 14th of Kartick 1283/20th October 1876. There is a provision in the lease restraining sale of the nimhowla to any other person excepting the lessor. Defendant No. 1 succeeded his father and sold the lands to defendant No. 2 and took a mirash ejara lease under him. The plaintiffs relied upon the above provision restraining alienation and further prayed that the defendant No. 1 might reconvey the property to them upon the receipt of Rs. 40 as provided for in the lease. The defendants contend that the provision in the kabuliyat against alienation is void and that the plaintiffs are not entitled to any khas possession. It is admitted that nimhowlas in Backergunj are permanent and heritable tenures. This lease is in respect of agricultural lands and if it was covered by Section 11 of the Bengal Tenancy Act, it would be transferable. It is contended on behalf of the plaintiffs that a clause restraining alienation in a document of this character before the date of the Act is operative. It is to be noticed that in this lease no right of re entry is reserved to the lessors. It was held in Nil Madhab Sikdar v. Narattam Sikdar 17 C. 826 : 8 Ind. Dec. (n.s.) 1095 that the plaintiffs are not entitled to eject the defendants when the lease contains no clause giving the lessor a right of re entry or providing that the lease shall become void in case of a breach of the covenant against alienation. That case is based upon the decision in Sonet Kooer v. Himmud Bahadoor 1 C. 391 : 25 W.R. 239 : 3 I.A. 92 : 8 Sar. P.C.J. 08 : 3 Suth. P.C.J. 257 : 1 Ind Dec.(n.s.)

245 (P.C.). No doubt a condition in a permanent lease restraining alienation is not void by itself, as has been held in *Keshab Lal v. Madhu Sudan Pal* 6 Ind. Cas. 685 : 12 C.L.J. 126 but the plaintiffs not having reserved any right of re-entry, I agree with the Courts below that they are not entitled to eject the defendants. The appeal is dismissed with costs.