

(1919) 01 CAL CK 0035
In the Calcutta High Court

Promotha Nath Ganguly and Another	Vs	APPELLANT
Amiraddi Sheikh and Others		RESPONDENT

Date of Decision : 21-01-1919

Acts Referred:

Court Fees Act, 1870 — Section 7(xi)

Citation : 55 Ind. Cas. 178

Hon'ble Judges : Newbould, J; Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for khas possession of a tank and also for arrears of rent with damages against three persons, on the allegation that they were the tenants of the plaintiffs under a Kabuliyat for a term of years and that on the expiry of the term, the plaintiffs were entitled to obtain khas possession.
2. The kabuliyat was executed by defendant No. 1 alone and so far as he was concerned, he stated in his written statement that he had no objection to the plaintiff's getting khas possession. The other two defendants pleaded that there was no relationship of landlord and tenant between them and the plaintiffs, and that they held the tank in dispute under a third party (one Amodini Debi) to the suit.
3. The Court of first instance found the question of title in favour of the plaintiffs and also found that all the defendants were tenants under the plaintiffs and accordingly gave a decree for khas possession as also a decree for rent against all the defendants.
4. On appeal, the learned District Judge held that the question of title could not be gone into in the suit as framed, as Court-fee had been paid only on Rs. 84, the amount of rent claimed. He accordingly did not go into the question of title. He found that there was relationship of landlord and tenant between the plaintiffs and the defendant No. 1, but that the plaintiffs had failed to show that the defendants Nos. 2 and 3 were also their tenants. In the result the decree of the

Court of first instance was reversed except as to the amount of the arrears of rent against defendant No. 1.

5. The plaintiffs have appealed to this Court.

6. u/s 7, Clause (xi) of the Court Fees Act, in a suit between landlord and tenant for the recovery of Immovable property from a tenant including a tenant holding over after the determination of a tenancy, the Court-fee is to be paid according to the amount of the rent of the Immovable property to which the suit refers, payable for the year next before the date of presenting the plaint.

7. So far as the defendant No. 1 is concerned, it has been found by both the Courts below that he was the tenant. The plaintiff, therefore, was entitled to recover possession of the tank as against him on the expiry of the term. The Court fee payable in such a suit, as stated above, would be according to the amount of the rent of the property. The rent in the present case is only Rs. 17 per annum. Upon such Court-fee being paid, the plaintiff will be entitled to a decree for khas possession against the said defendant. No question of notice arises with regard to the defendant No. 1, because the defendant No. 1 stated that he had no objection to the recovery of khas possession by the plaintiff.

8. As for the other two defendants, it has been found that there was no relationship of landlord and tenant between them and the plaintiff. The suit, therefore, cannot proceed without a prayer for declaration of title and the suit is not framed accordingly. In these circumstances, the learned Pleader for the appellant applies for permission to withdraw the suit so far as the defendants Nos. 2 and 3 are concerned with liberty to bring a fresh suit.

9. The plaintiffs are accordingly permitted to withdraw from the suit with liberty to bring a fresh suit with respect to the same subject-matter as against the defendants Nos. 2 and 3. They must pay the costs of defendant No. 3 in all Courts and of the defendant No. 2 for the lower Courts only.

10. The decree of the Court of first instance will be restored as against the defendant No. 1, upon the plaintiffs paying the Court-fee Rs. 18 on the plaint leviable on the sum of Rs. 17 in the first Court, as also the same amount (Re. 1 annas 8) on the memorandum of appeal in this Court. The Court-fees must be paid within three weeks from this date and on that being done, the decree of the Court of first instance as against defendant No. 1 will be restored.

11. The cross-objection on behalf of the defendant No. 1 raises the question whether he ought to be made liable for the rent. But having regard to the clear finding of both the Courts below that the relation of landlord and tenants exists between the plaintiff and the defendant No. 1, the cross objection must be dismissed with costs. We make no separate order for costs of this Court against the defendant No. 1 in the plaintiff's appeal.