
(1926) 03 CAL CK 0004
In the Calcutta High Court

Radha Gobinda Dey and Others

APPELLANT

Vs

Hara Mohan Bakshi and Others

RESPONDENT

Date of Decision : 18-03-1926

Acts Referred:

Land Registration Act, 1876 — Section 78

Citation : 96 Ind. Cas. 584

Hon'ble Judges : Chakravarti, J

Bench : Single Bench

Judgement

Chakravarti, J.—This is an appeal by the plaintiffs and arises out of a suit for rent for the years 1325 to 1328 B.S. The plaintiffs claim 3-arms 5-gds share of the rent and urge that out of Rs. 34-12-6, the rent payable in 16-annas share to the plaintiffs they were entitled to Rs. 7-1-3.

2. The defence of the defendants was that the plaintiffs were not entitled to the rent as no relationship of landlord and tenants existed. The defendants further contended that the plaintiffs' names were not registered with reference to the entire share of the rent. Both the Courts have dismissed the suit on the ground that the plaintiffs have failed to establish that they or their predecessors were in separate collection of the rent as was alleged by the plaintiffs. Secondly, that as the plaintiffs' names are not registered as regards 1-gd. share which is registered in the name of one Asutosh Dhar who was not a party to the suit, Section 78 of the Land Registration Act was a bar to the suit. It is unnecessary for me to decide the second question raised in this case because, in (sic) opinion, the suit fails on the first (sic) mentioned above. The plaintiffs (sic) allege that they have received (sic) of their share from the tenant-(sic). They distinctly stated that the (sic) cessors were collecting their rent (sic) from the defendants. This, (sic) have failed to prove.

3. In my opinion, therefore, (sic) cannot get a decree for rent (sic) as they have failed to establish that the (sic) was a separate collection of their share (sic) rent before.

4. There was no prayer for apportionment of rent in the plaint. Nor was any attempt made, in the Courts below to put the plaintiffs' case on that basis. On the facts found, the plaintiffs were entitled to the rent claimed; but it is to be regretted that they failed to get a decree for their just dues on account of the difficulties which were created by themselves. I have no alternative but to dismiss the appeal with costs.