

(1907) 03 CAL CK 0012
In the Calcutta High Court

Ratan Lal Gir

APPELLANT

Vs

Farshi Bibi

RESPONDENT

Date of Decision : 08-03-1907

Acts Referred:

Citation : (1907) ILR (Cal) 396

Hon'ble Judges : Mitra, J;Caspersz, J

Bench : Division Bench

Judgement

Mitra and Caspersz, JJ.—This is an appeal in a suit by a raiyat to eject an under-raiyat. The defendants held the land under a registered lease for a term of years. The term expired and the present suit was brought one year and seven months after the expiry of the lease.

2. The defendant pleaded want of notice and acceptance of rent as proof of his having been allowed to hold over.

3. He also demanded compensation.

4. The Munsif framed issues on these points and recorded the evidence in English as if the suit had been one for rent under the Bengal Tenancy Act. He gave the plaintiff a decree on the finding that the defendant was not allowed to hold over and that no notice was necessary.

5. On appeal by the defendant, the learned Officiating District Judge of Rungpore held that the record of evidence having been made in English, there had not been a proper trial of the suit, and he was disposed to remand the case to the first Court for a fresh hearing. But he dismissed the suit and decreed the appeal on the ground that as the suit had been instituted one year and seven months after the termination of the written lease there was a presumption that the defendant was allowed to hold over.

6. As regards this last point, there is no authority for the proposition that simply because a landlord does not institute a suit for a time, the presumption is that

the tenant was allowed to hold over. The expression "holding over" is well understood. It means that the relation of landlord and tenant continued with the assent of both parties, and the overt acts, by which the relation might be continued, are either the receipt of rent by the landlord or his assenting to the continuance of the tenancy by other acts or words. In the present case, the learned Judge has not come to any distinct finding as to facts, which would induce a Court to hold that the defendant was allowed to hold over. Mere delay in the institution of the suit is no reason for the dismissal of the suit on the ground that the defendant was allowed to hold over. The lower appellate Court, therefore, erroneously dismissed the suit.

7. As regards the order of remand, it is true that the Munsif ought to have recorded the evidence in full in the language of the Court, the suit not being one for rent. But that is merely an irregularity--an irregularity which may be cured by the application of Section 578 of the Code of Civil Procedure.

8. The analogy of a case tried summarily under the Code of Criminal Procedure is not applicable to civil suits, if there be no defect of jurisdiction. When a Criminal Court tries a case summarily under the special powers conferred by that Code, and tries the case, when it has no jurisdiction to do so, the matter is different. There the question is one of jurisdiction, it is not merely an irregularity not affecting jurisdiction, the lower appellate Court was therefore wrong in thinking that it ought to remand the case for a fresh trial.

9. We accordingly set aside the decree of the lower appellate Court, and as that Court has not come to any distinct finding on the evidence as to whether rent had been received after the expiry of the lease for any period subsequent to the lease, the case must go back for a rehearing on the evidence already on the record. If that Court comes to the conclusion that the plaintiff had not received any rent from the defendants since the expiry of the lease for any period subsequent to the lease, the suit should be decreed, otherwise the suit should be dismissed. Costs of this appeal will abide the result.