
(1922) 06 CAL CK 0028
In the Calcutta High Court

Reajuddin Patwari and Others

APPELLANT

Vs

Syed Abdul Jobbar

RESPONDENT

Date of Decision : 27-06-1922

Acts Referred:

Bengal Tenancy Act, 1885 — Section 157, 188

Citation : AIR 1924 Cal 445 : 69 Ind. Cas. 504

Hon'ble Judges : Lancelot Sanderson., C.J.; Ghose, J

Bench : Division Bench

Judgement

Ghose, J.—This appeal arises out of a suit brought by the plaintiff-respondent for ejectment of defendants Nos. 1 and 2 from certain lands on the allegation that he is entitled to possession of those lands by virtue of an ijara lease obtained from the eight annas proprietor in 1318 B.S. The defendants, who are the appellants in this Court, were the dar ijaradars of the village in which the lands are situate from the year 1866 and their dar ijara lease terminated some time in the year 1910. During the period they were in possession of the village as dar ijaradars they entered into occupation of the lands in suit and after the termination of the lease they continued in possession of these lands, and the plaintiff alleged that they held these lands without any title and are, therefore, liable to ejectment as these lands are included within his eight annas share of the ijara. The defendants amongst other things pleaded that they were entitled to hold these lands as raiyats and were not liable to ejectment having obtained possession of these lands by virtue of purchase of the holdings of raiyats under them in execution of decrees for rent. The plaintiff in the alternative made a prayer for assessment of a fair and equitable rent u/s 157 of the Bengal Tenancy Act.

2. The Court of first instance declared the plaintiff's ijara right to the eight annas share of the village and declared that the plaintiff would get rent of the lands in respect of his share, holding that the defendants were the tenants with regard to these lands. There were appeals by both parties against the decision of the trial

Court. The plaintiff appealed against the order fixing a fair and equitable rent u/s 157 of the Bengal Tenancy Act, and the defendants appealed against the decree declaring the right of the plaintiff to the property in suit. The learned Judge in the Court below dismissed both the appeals.

3. The defendants Nos. 1 and 2 contend in this Court that the suit of the plaintiff is not maintainable having regard to Section 188 of the Bengal Tenancy Act as they were tenants on the land, and the plaintiff was only the owner of a share of the landlord's interest. The decision of the question depends upon the fact as to whether the defendants were the tenants of the plaintiff or not. It was contended by the appellants that after the expiry of the dar-ijara in 1910 it should be considered that they were holding over and consequently they were tenants of the plaintiff. But it is quite clear that they did not remain in possession either by virtue of any arrangement with the plaintiff or with his assent and it cannot; therefore; be said that they were holding over.

4. It was next contended that they were tenants on sufferance because the plaintiff did not choose to disturb their right after the expiry of the dar-ijara lease till they brought the suit in 1916. It is now well settled that there is no such thing as tenancy on sufferance in this country, and the result, therefore; is that the defendants must be held to be trespassers after the expiry of their lease in 1910.

5. Then having regard to the finding of the lower appellate Court, that the defendants obtained possession of these lands during the period they held the village in their dar-ijara right either by taking possession of the tenant's lands when they were abandoned or by force; it is not necessary in this case to consider whether the defendants might claim any right as raiyats with regard to these lands on the basis of any other title. Now, if the defendants were trespassers on the lands, Section 188 of the Bengal Tenancy Act can have no application to the present suit in ejectment because, that section applies only to cases of landlords and the plaintiff is not the landlord of the defendants.

6. The appeal of the defendants must, therefore, fail and it must be dismissed.

7. The plaintiff has preferred cross-objections and he claims that he is entitled to khas possession on the ground that the defendants were trespassers. But he made an alternative claim u/s 157 of the Bengal Tenancy Act for assessment of a fair and equitable rent and the learned Judge in the Court below has given him relief under that section. It seems to, me that he is not entitled to say that he does not want that alternative relief which has been granted to him, and that he desires to have the other relief which he claimed by way of ejectment. In effect, the plaintiff expressed that he would be satisfied with either of the two prayers which he made in his plaint and he succeeded in getting one and, therefore, he has no real cause for complaint. The cross-objections also fail and they are; therefore, dismissed.

8. We make no order as to costs in the appeal and in the cross-objections.

Sanderson, C.J.

9. I agree.