

(1878) 06 CAL CK 0027
In the Calcutta High Court

Rungo Lall Mundul

APPELLANT

Vs

Abdool Guffoor and Others

RESPONDENT

Date of Decision : 27-06-1878

Acts Referred:

Evidence Act, 1872 — Section 109

Citation : (1879) ILR (Cal) 314

Hon'ble Judges : Richard Garth, C.J;McDonell, J

Bench : Division Bench

Judgement

Richard Garth, C.J.—Our only doubt in this appeal has been, whether we ought to decide the case upon the materials before us, or to remand it for re-consideration; and we think that perhaps the safest course will be to remand it.

2. The suit was brought by the plaintiff to recover the rent of certain lands which are specifically described in the plaint as plots 7, 8, 9, and 12. The defendants' case was, that they were not tenants to the plaintiff at all. They do not say that they are not in possession of the lands which are mentioned in the plaint, but they say that they have no concern with any lands which belong to the plaintiff, and that they do not owe the plaintiff any rent.

3. Now in the Munsif's Court the plaintiff gave evidence of a decree which was obtained in a suit for rent in the year 1863. That suit was brought by Hera Lall Seal, the predecessor in title of the plaintiff, against the predecessors in title of the present defendants, for the rent of those very lands, described precisely as they are described in the plaint in this suit, and in that suit the plaintiff obtained a decree against the defendants for the rent claimed. There is not the least doubt that in point of law that decree did establish the relationship of landlord and tenant in respect of the lands in question between the plaintiff and the defendants in that suit, and the relationship having once been established, we take it to be clear that it continues as between the parties to that suit and their representatives in title, until it is proved to have ceased.

4. It is admitted that the defendants in the former suit are the ancestors in title of the present defendants, and if the latter desire to show that they are no longer the plaintiff's tenants, they must explain and prove the reason.

5. The Evidence Act, Section 109, confirms what was undoubtedly the previous law upon this subject. That section says, "When the question is, whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively is on the person who affirms it."

6. Now, it having been established by the decree of 1863 that the relationship of landlord and tenant did exist between the predecessors in title of the parties to that suit, it was for the defendants here, who wished to show that the relationship had ceased, to prove that fact. One means which they took to prove it was this: they showed that Hera Lall Seal, the plaintiff in the suit of 1863, brought another suit, some three years afterwards (in the year 1866), for the rent of these same lands against the predecessors in title of the defendants; and those defendants set up by way of defence that they had relinquished the lands; and they subpoenaed the plaintiff, Hera Lall Seal, to appear as a witness at the trial. Now it is extremely likely that a gentleman in the position of Hera Lall Seal, when he was subpoenaed by his own tenants to appear as a witness in a Court of Justice, and knowing that he would probably have an unpleasant time of it there, would rather sacrifice the rent he was claiming than appear in answer to the subpoena; and it certainly appears that he withdrew that suit. But the withdrawal amounted to no more than this--that the plaintiff gave up his claim for the particular rents for which the suit was brought. It in no wise put an end to the relationship of landlord and tenant, which was established by the decree of 1863. The Judge in the Court below appears to have considered that the withdrawal of that suit had the effect in some way or other of neutralizing the decree of 1863; but we cannot see how it could have had that effect.

7. Then again the learned Judge appears to think that because no rent was proved to have been received by the present plaintiff, or his predecessors, since the decree of 1863 was passed, he is entitled to assume that the defendants are no longer the plaintiff's tenants. But here again we think he was clearly wrong. So long as the relationship of landlord and tenant has once been proved, the mere non-payment of rent, though for many years, is not enough to show that the relationship has ceased to exist. The defendant is bound to show that it has ceased by some affirmative proof; and more especially in a case of this kind, where the defendants do not expressly deny that they still continue to hold the lands in question.

8. It may be, however, that there are some portions of the evidence which here, in special appeal, we have not had an opportunity of examining, or of appreciating at its due weight, and this consideration induces us to send the case back for re-trial, having regard to the foregoing observations.

9. So far as we can see at present, there is no reason why the plaintiff should not be entitled to recover the rent which he claims; but we think it safer on the whole to remand the case for re-trial.

10. The costs will abide the result.