

(1913) 11 CAL CK 0006
In the Calcutta High Court

Case No : Appeals from Appellate Decrees Nos. 4090 of 1910 and 98 of 1911

Sarat Chandra Mukhopadhyay and another	APPELLANT
Vs	
Rajendra Lal Mitra and others	RESPONDENT

Date of Decision : 27-11-1913

Acts Referred:

Citation : (1913) 11 CAL CK 0006

Final Decision : Dismissed

Judgement

Fletcher, J.—These are two appeals presented against a judgment and decree passed by the learned District Judge of Hughly, dated the 30th August 1910, reversing the judgment and decree passed by the learned Subordinate Judge. The suit was brought by the Plaintiffs for joint possession of certain lands in which they claimed an 8 annas share. The first Court dismissed the suit ; but, on appeal, the learned District Judge reversed the decision of the Subordinate Judge. Two appeals have been presented to this Court: one (No. 4090 of 1910) by the Defendant No. 7, i.e., the Bengal Coal Company and the other (No. 98 of 1911) by the Defendants Nos. 6 and 8. The case has been dealt with very fully by the learned District Judge who has given a very long and careful judgment. When you look at the facts, the case is one of extreme simplicity. The Plaintiffs derived their title to the land through one Luchmi Narayan. The Defendants Nos. 6 and 8 claim title through one Gouri Sankar. It is not necessary to go into the intermediate title. The Defendant No. 7, the Bengal Coal Company, claim under a lease executed by Gouri Sankar in their favour, dated the 21st Chaitra 1262, of the Bengali year which corresponds to 2nd April 1856. Gouri Sankar had, prior to the granting of this lease to the Bengal Coal Company, the Defendant No. 7, acquired from Luchmi Narain a lease of his share for a term of 51 years from the month of Falgun in the Bengali year 1262 to the month (sic) Magh in the Bengali year 1313 : (sic) in that lease was contained this clause :—" If you or your heirs be unwilling to take an ijara settlement of the said property on the expiry of the term, you or your heirs shall take away such appurtenances which you make at your own cost." The lease expired on the expiration of the term of 51 years when

an attempt was made by the Plaintiffs to be put into joint possession but they were refused. The statements made in the written statement in this suit show quite clearly what the case made by the appealing Defendants is. First of all, in para. 7, Sarat Chandra Mukerjee, that is, the Defendant No. 6, sets up that he is entitled to have a fresh settlement and get a new lease granted under the terms of a covenant for renewal. In the 8th para, he sets up another case that even assuming that he is not entitled to a renewal, he is entitled, under the provisions of the Transfer of Property Act to receive a notice to quit before the Plaintiffs can get a decree for khas possession and in the 12th para, he sets up a case that the Plaintiffs cannot get joint possession unless they make an application for partition. The defence set up by the Bengal Coal Company is much stronger because they set up that the Plaintiffs' suit is barred by estoppel, laches and acquiescence as well as by limitation, the Defendant Company having been in adverse possession for 51 years upon a claim of permanent title. It seems to me that those are the cases on which the parties offered to defend the suit when it was brought to Court and we are bound to consider those defences in deciding this case. As my learned brother pointed out in the course of the argument, if the sole defence that was raised in the suit had been that the proper remedy of the Plaintiffs was by (sic) then the Plaintiffs could have either applied to the Court to have the plaint amended by adding a claim for partition or they could have instituted another suit claiming partition. But the case has not proceeded on that footing at all. These points have been used solely with intent to defeat the Plaintiffs in the present suit. One thing is clear on the findings of the learned District Judge. First of all, that the Bengal Coal Company had express notice of the lease by Luchmi Narain to Gouri Sankar. That is a finding of fact and the facts on which the learned Judge finds that amply warrant the finding. But if that had not been so, I do not think it would have made very much difference. Having found that the Defendant No. 7, the Bengal Coal Company, had notice of the lease, of course, the learned Judge very properly found that they had notice of the terms of the lease. The term of the lease was 51 years and the grant to the Bengal Coal Company purported to be a grant of a permanent tenure from the 2nd April 1856. The Bengal Coal Company must be taken to have known that the permanent lease could only operate out of the share of Gouri Sankar ; and so far as regards the share which Gouri Sankar held as a lessee from Luchmi Narain, it could only take effect during the pendency of the term. That seems to have been found by the learned District Judge quite clearly and there is no doubt about that fact. The first point which has been raised in these appeals is that the lease from Luchmi Narain to Gouri Sankar, dated the 12th February 1856, contained a covenant for renewal--either a covenant to renew for a term of (sic) years or a covenant to renew in perpetuity. In my opinion, if the matter is free from authority, it is quite impossible to say that these words giving the lessee a right at the expiry of the term to take away what the document calls the appurtenances,--I suppose, the fixtures put on the land,--could operate as a covenant under which the lessee could compel the lessor to grant a fresh term. Moreover, this has been the view that was taken on this very document in a

former case. Our attention has been directed to Jagendra Chandra Mitter v. Rajendra Nath Mitter 18 C. L. J. 262 (1891), and the same view was taken as to the effect of this lease of the 12th February 1856. It would be quite impossible for any body reading this document to come to the conclusion that a license in a lease giving to the lessee a right to carry away the fixtures on the expiry of the term necessarily involves a stipulation that if he does not carry away the fixtures his lease would be renewed. That is sufficient, in my opinion, to dispose of the case of renewal.

2. Then we had a very extraordinary point discussed before us, that is, estoppel by conduct against the persons claiming through Lucfimi Narain. The learned District Judge found and found as a fact that the Bengal Coal Company, the persons who set up this estoppel against the Plaintiffs had express notice of the terms of the lease from Luchmi Narain to Gouri Sankar. If the Bengal Coal Company cared to lay out money on a 51 years" lease on a portion of the land they must take consequences. Many people lay out money on lands which are let out for shorter terms than a permanent tenure ; but I have never heard that the doctrine of estoppel by conduct applies in a case in which the party claiming that the other side is bound by the estoppel had express notice of the fact which he says was not represented to him by the other side as the true fact. This case of estoppel, in my opinion, has no force at all. The other point is really the point which has been argued before us most strenuously, at any rate this morning, and that is as to whether the Plaintiffs are entitled to a decree for joint possession or whether their proper remedy is not to proceed by way of partition and have their share in the property allotted to them Of course, the authorities are clear, that, unless there is an ouster of the Plaintiff, he cannot sue for joint possession. In this case, I have already called attention to what the points are that were raised in the written statements. In those written statements there is a clear denial of the tile of the Plaintiffs to have any immediate right in the property. It is said that the interest of the Plaintiffs is reduced to that of being emitted to a portion of the rent payable by the Defendant No. 7 for the land of which the Defendant No. 7 claims to be a permanent tenant. If it is stated by the man who is in possession that the other side has no right and if he is refused leave to enter the land that is a case of actual ouster, and it is apparent that the present case is a case of actual ouster when you read the written statement. As my learned brother pointed out in the course of the argument, if that point had been the only point raised that the proper remedy was to proceed by way of partition, the Plaintiffs might have elected to proceed either by a fresh suit or by an amendment of the existing suit to have the property partitioned. But that was not the case at all. The whole case that was presented before us was that the Plaintiffs were not entitled to get joint possession on the ground that the Defendant No. 7 had obtained a permanent interest in the property. That being so, it seems to me that on all grounds the judgment of the learned District Judge which has been very carefully considered and written out at great length is right and that the present appeals must fail and must be dismissed with costs.

N.R. Chatterjea, J.

I agree.