

(1942) 01 CAL CK 0019
In the Calcutta High Court

Sazawar Khan and Another

APPELLANT

Vs

Satyendra Lal Chowdhury and Others

RESPONDENT

Date of Decision : 16-01-1942

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : AIR 1942 Cal 406

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—This appeal is by the defendants and is directed against a decree for ejectment. The position is as follows: The plaintiffs instituted Title Suit No. 804/92 of 1935 to eject the defendants from the disputed land on the ground that they were trespassers. The defence was amongst other things that the defendants had extinguished the title of the plaintiffs by adverse possession. In the course of the trial this defence was abandoned. The defendants, however, contended that they had obtained a limited right to hold the lands as tenants by adverse possession. The Munaif accepted this defence. He accordingly gave the plaintiffs a declaration of their title and right to get rent from the defendants but dismissed the claim for khas possession. The plaintiffs appealed to the District Court without success and the matter terminated there. The plaintiffs then instituted a suit for the assessment of fair rent. They obtained a decree and it is not disputed by the defendants that they are liable to pay rent as decreed. The plaintiffs then instituted the present suit for ejectment on the allegation that they had terminated the tenancy by a valid notice to quit u/s 106, T.P. Act.

2. In my judgment, this suit was entirely misconceived. Section 106, T.P. Act, implies the existence of a lease. In the present case, there never was a lease. If there was a lease, it would be quite meaningless for the Court to assess fair rent. As there was no lease, no question of serving a notice to quit could arise. Then again, it would be impossible to serve a valid notice because it could not be ascertained on what date the annual or monthly tenancy, whatever it may be,

terminated. In the present case, the relationship of landlord and tenant between the parties has been created not by a lease but by a decision of the Court. On behalf of the respondents, it was contended that the decision of the Court has not given the defendants a permanent right and that there are other methods by which the defendants may be ejected. It is not for me now to express any opinion on that argument. The only question is whether the tenancy of the defendants has been legally terminated by the notice to quit which was served upon them. The appeal is accordingly allowed. The decrees of the Courts below are set aside and the suit is dismissed with costs in all Courts. Leave to appeal u/s 15, Letters Patent, is asked for and is refused.