
(1887) 06 AHC CK 0008
In the Allahabad High Court

Shitab Dei and Others

APPELLANT

Vs

Ajudhia Prasad and Others

RESPONDENT

Date of Decision : 27-06-1887

Acts Referred:

Citation : (1888) ILR (All) 13

Hon'ble Judges : Tyrrell, J; John Edge, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

John Edge, Kt., C.J.—(after stating the facts as above, continued): It is contended that on the determination of the term in 1289 fasli the tenancy also determined. The Rent Act must be looked at to see if this contention is well founded. Section 36 of the Rent Act enacts that if the landholder desires to eject a tenant holding only for a limited period after the determination of his tenancy, he shall cause a written notice of ejectment to be served on the tenant under the provisions of the Act. Sections 37 and 38 provide for the contents and method of serving such notice, and Section 39 gives the tenant a right within thirty days after the service of notice to contest his liability to be ejected, and provides the tribunal to determine such questions. Sub-clause (c) of Section 39 enacts that upon the determination of such questions adversely to the tenant or where no application under that section has been made, the "tenancy of the land in respect of which notice has been served shall cease." The only construction I can put on the section is that if the landlord has failed to give the notice required by Section 36, the tenancy is not to be treated in law as determined on the determination of the term provided by the lease, but is to be treated as subsisting. Section 40, I think, also leads to the same conclusion. Under these circumstances I am of opinion that the tenancy did not determine on the determination of the term granted by the lease, and the defendants were wrong-doers in usurping possession and taking the rents and profits of the lands. The only question remaining is as to damages. It is admitted that the defendants

have received Rs. 3, 126. It is also admitted on both sides that Government Revenue, Rs. 1, 147-13-10, has been paid, leaving a balance of Rs. 1, 978-2-2. The defendants say that they have paid the landlord Rs. 875 and have incurred costs of collection of the rents. The Rs. 875 were not paid at the request of, or on behalf of, the plaintiffs; they were paid by the defendants on their own behalf wrongly out of the moneys with which the defendants had no legal or equitable right to intermeddle. The payment, if made, is no answer to the plaintiff's claim. The plaintiffs say: You have wrongfully and in violation of my right received Rs. 3, 126. The defendants cannot claim, being tort-feasors, to deduct the costs of the collection of money they have wrongfully collected. I am of opinion that the plaintiffs-appellants are entitled to a decree for Rs. 1.978-2-2 plus interest thereon at the rate of 12 per cent, per annum from the 17th February 1883, to the date of this decree, and with costs here and below, and 6 per cent, on the amount of this decree and costs until realization.

Tyrrell, J.

2. I entirely concur.