

(1918) 04 CAL CK 0010
In the Calcutta High Court

Siba Krishna Sinha Sarma and Others	APPELLANT
Vs	
Jagat Chandra Talukdar and Others	RESPONDENT

Date of Decision : 04-04-1918

Acts Referred:

Citation : 45 Ind. Cas. 732

Hon'ble Judges : Smither, J; John Woodroffe, J

Bench : Division Bench

Judgement

Woodroffe, J.—This was a suit to recover arrears of rent in respect of a tenure. This tenure originally belonged to a man of the name of Ram Saran Bachaspati, and the persons sued for rent were two persons of the names of Jagat Chandra Talukdar and Nritya Sundari Dassi who were his heirs.

2. It appears, in the first place, that in this suit the plaintiffs sued both the persons entitled to the tenure. When the case came on for hearing an objection was taken that, as stated in the pleadings, the interest of the first defendant had ceased in the tenure, for in 1305 he sold it to two persons of the names of Syam Sundar Sarkar and Nritya Sundari Dasi, and the former sold it again to Dwarka Lal Sarkar and the latter to one Anath Bandhu Guha. One of these persons applied to be made a party to the suit. It appears that as regards the transfer there is no question of the right of transferability--the landlord's fee was paid and the name of the transferee was recorded in the khatian. On that and on the registration of the transfers the liability of the 1st defendant ceased and such liability as was upon him devolved upon his transferees. The plaintiff, however, was unwilling to make the transferees parties to the suit. As he did not do so, both the Courts below held that the suit was not well founded and that it could not proceed without the addition of the transferees as defendants and both the Courts thereupon dismissed the suit.

3. The question, therefore, before us is narrowed down to a single point, namely, whether in the circumstances of this case the plaintiff could sue the 2nd defendant alone. This question again was dependent on a consideration of that

which has been argued before us, namely, whether or not the liability of defendants Nos. 1 and 2, who were admittedly heirs of Ram Saran Bachaspati, was a joint liability or a joint and several liability. The question then is whether the plaintiff could proceed against one of the heirs without joining the other. This turns upon the question of the applicability in the present case of the provisions of Section 43 of the Contract Act. In my opinion it has not been shown that that section has applicability in the present case, which is one as I have said of heirs and transferees from such heirs. This is not a case of a contract which is referred to in that section nor, as has been suggested, has an implied contract by reason of the transferees taking possession of the land or having gone to the landlord to have their names recorded and so forth been made out. Of that we have no evidence before us in this case. A number of decisions have been referred to, but in none of them are the facts on all fours with the present case. I think the judgments of both the Courts below are right. The appeal is, therefore, dismissed with costs.

4. Smither, J.--I agree.