

(1932) 07 CAL CK 0032
In the Calcutta High Court

Sitabuddin Biswas

APPELLANT

Vs

Behari Lal Mondal

RESPONDENT

Date of Decision : 22-07-1932

Acts Referred:

Citation : AIR 1934 Cal 134

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Judgement

Mukerji, J.—The suit was instituted by the plaintiff for ejectment of the defendant on declaration of his own title and for mesne profits. It was instituted on the allegation that the defendant was a trespasser. For greater safety how-ever the plaintiff had chosen to serve a notice on the defendant giving him time till the 31st Chait 1335 to vacate. This he did because of an entry in the settlement record-of-rights in which it had been stated that the defendant was a Korfa tenant with occupancy right. Defendant pleaded that he held the suit lands in Korfa right at a jama of rupees 9-12-6 under the plaintiff and that he had acquired a right of occupancy to the jote by custom. The trial Court overruled both the pleas taken in defence and decreed the suit. On appeal preferred by the defendant the District Judge upheld the decision of the trial Court. As regards the question of notice, the argument that has been advanced before me is that the suit was instituted before the expiry of the date mentioned in the notice and inasmuch as the plaintiff asked the defendant to vacate by the end of Chait 1335, it should be held that the defendant was occupying under the leave and license of the plaintiff and that therefore the plaintiff had no right to institute the suit before the expiry of that date. So far as this matter is concerned, it is perfectly clear that no question of leave and license can arise in this case.

2. The plaintiff treated the defendant as a trespasser, and it was merely because there was an entry in the settlement record-of-rights to the effect that the defendant had certain rights as a tenant, that this notice had been given. If it be found that the defendant is not entitled to remain on the land as a tenant, then

the Court would be perfectly justified in making a decree in plaintiff's favour. In any case, on the date that decree was passed by the trial Court no question of any leave or license could arise, because the date fixed in the notice had expired long before. So far as the question of the defendant's right to remain on the land is concerned, the trial Court went into it very carefully and recorded a finding against the defendant. The learned District Judge has not dealt with this matter at all with any degree of clearness in his judgment. All that he intended to find may be gathered from one single sentence in his judgment which runs in these words; "it is true that the record-of-rights shows defendant as a Korfa raiyat, but it is manifestly wrong." There the learned Judge was evidently referring to the fact that the defendant in a previous written statement had claimed to hold the land not under the plaintiff but under the Midnapore Zamindari Company, whereas the record was to a different effect. Be that as it may, this question has not been properly determined by the District Judge.

3. I therefore allow the appeal and send the case back to the lower appellate Court on remand, only in order that the defendant's right to remain on the land may be determined upon the evidence on the record. No other question will be allowed to be raised nor any other question will have to be decided. On the said question only the Court will proceed to make its order in this case. Costs of this appeal will abide the result.