

(1918) 06 CAL CK 0012
In the Calcutta High Court

Srimati Mukta Keshi Debi and Another	APPELLANT
Vs	
Srimati Giri Bala Devi and Others	RESPONDENT

Date of Decision : 24-06-1918

Acts Referred:

Citation : 47 Ind. Cas. 1006

Hon'ble Judges : Walmsley, J;Panton, J

Bench : Division Bench

Judgement

Walmsley, J.—The plaintiffs-appellants brought this suit to recover khas possession of a certain plot of land on declaration of their title thereto. Their case was that two brothers Jagabandhu and Nabin held the land under them as under raiyats, each brother having a separate plot which he held apart from the other brother. Both brothers are dead and the defendants Nos. 4, 5 and 7 now represent the deceased Nabin. Sometime in 1913 the plaintiffs brought a suit purporting to be u/s 66 of the Bengal Tenancy Act against the representatives "of both the brothers and obtained a decree to the (effect that if the decretal amount were not paid within fifteen days, the plaintiffs would be entitled to enter into possession of the land. The, amount specified was not paid and the plaintiffs obtained symbolical possession. Then the defendant No. 1, the contesting defendant, appeared on the scene. She said that defendant No. 8 had obtained a decree against Nabin and put the decree into execution against Nabin's widow and daughters and in execution sold Nabin's share in the holding and bought it himself and that he had subsequently transferred it to her, i.e., the defendant No. 1. She made a claim under Order XXI, Rule 100, Civil Procedure Code, for the purpose of recovering possession, but during the course of the investigation of her claim she made a statement to the effect that she was actually in possession; and the Court accordingly dismissed the claim. Then on 23rd January 1915 the plaintiffs brought the present suit. In answer to the plaintiffs the defendant No. 1 filed a long written statement, amongst other things, challenging the nature of the plaintiffs' interest in the land and their assertions regarding the defendant's interest. When the case came to Court it was agreed

that two preliminary issues should be tried, the first,, of them relating to the decree obtained by the plaintiffs u/s 66, and the Munsif proceeded to decide these two issues.

2. In the suit brought by the plaintiff against the brothers u/s 66 they had asked for rent of four years, not for one year only, and an objection was taken on behalf of the defendant No. 1 that by asking for four years" rent they had disentitled themselves to the remedy granted by Section 66. The Munsif upheld this contention, relying on the case of Sitanath Midda v. Basudeb Midda 2 C.L.J. 540. He also found the other issues against the plaintiffs, but that followed as a necessary consequence on his finding on the first issue. The plaintiffs appealed to the District Judge and the learned District Judge upheld the decisions of the first Court.

3. It is now contended before us that the Courts below are wrong in holding that the decree passed in the plaintiffs" suit u/s 66 was bad. The authority I have just mentioned is quite clear on the point. It follows an earlier case reported as Jogeshuri Chowdhrair v. Mahomed Ebrahim 14 C. 33 : 7 Ind. Dec. (N.S.) 23 and I do not myself entertain any doubt about the correctness of these decisions. It follows that the decree directing that the plaintiffs should be entitled to recover khas possession of the land if four years" rent was not paid was bad. Further the defendant No. 1 was not a party to those proceedings, although she was actually at that time in possession of the land. Now the case for the plaintiffs as set out in their plaint is clearly based upon that decree. The whole of the plaint makes it plain that they claimed to be put in possession of the land on the ground that the sum of money mentioned in the decree passed in that suit had not been paid to them by the defendants. It follows, therefore, I think, that on this ground alone the plaintiffs" suit was lightly dismissed. If the plaintiffs bring another suit to evict the defendant No. 1 as a trespasser, the other points which have been mentioned in this appeal will arise. We express no opinion regarding those points or regarding the views set out in the judgment of the learned Judges. For the reasons given I think that the appeal should be dismissed with costs.

Panton, J.

4. I agree.