
(1920) 08 CAL CK 0033
In the Calcutta High Court

Srimati Sashibala Debi

APPELLANT

Vs

Srimati Amola Debi and Others

RESPONDENT

Date of Decision : 27-08-1920

Acts Referred:

Citation : 66 Ind. Cas. 61

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

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for ejectment, and it is preferred by the defendant. The suit was dismissed in the First Court, but decreed on appeal.
2. The plaintiff's case is that defendant is in occupation of a plot measuring about two cuttahs, as a tenant-at-will.
3. The defendant raised several pleas in her written statement but we are only concerned with two. The first is, that the holding of the plaintiffs in which the two cottah plot is comprised is an agricultural holding in the sense that it is, used for horticultural purposes, and the second is, that the tenancy was created before the Transfer of Property Act came into force, and that a presumption of permanency ought to be drawn.
4. In regard to the first contention, it is admitted that the two cottah plot is used by the defendant solely for residential purposes. The rest of the holding in which it is comprised has a number of houses on it, and also has several fruit trees growing on it, The learned Judge has held that the plaintiffs' holding is mainly used for residential purposes, and that the evidence does not justify the finding that their holding is a horticultural holding; granted that this finding of the lower Appellate Court is one that can be challenged in second appeal, I think it is obviously correct. The whole area of a residential holding cannot, ordinarily, be covered with buildings, and the fact that the surplus land is planted with fruit-bearing trees does not alter the character of the holding.
5. The learned Judge's finding on the second point is that there is no proof that

plaintiffs' tenancy, or the tenancy of defendant's predecessor, was created before the passing of the Transfer Property Act. All that is known of the defendant's tenancy is that Rebaki Dasi held the land in 1291 B. S., that is, in 1884, and there is nothing to show that the tenancy existed before that year. It is urged that, under the circumstances, there is a presumption that the tenancy is much older, and that in its origin it was intended to be permanent, and attention is drawn to the case of *Surendra Nath Roy v. Dwarka Nath Ohakravarty* 50 Ind. Cas 856 : 24 C. W. N. 1; (1919) M. W.N. 811 (P. C.). in regard to the remarks made by the lower Courts about the dakhilas. In view of this authority, I think that the evidence afforded by the dakhilas is not to be regarded as conclusive, but both the Courts hold that, quite apart from the entries in the dikhilas, the circumstances do not warrant the presumption of permanency. They point out that the circumstances are different from those in the case of *Mohoram Sheikh Chaprasi v. Telamuddin Khan* 13 Ind. Cas 606 : 16 C. W. N. 567 15 C. L. Y. 220, and I think they are right, for in that case the defendants were able to carry their tenancy back to a very early date.

6. I think, therefore, that the learned Judge was right in holding that the defendant's tenancy was created after the passing of the Transfer of Property Act, and also in holding that the circumstances do not warrant the presumption that the tenancy was in its origin of a permanent character.

7. In my opinion, the appellant has failed to show that the judgment of the lower Appellate Court is wrong, and I think that the appeal should be dismissed with costs.

Cuming, J.

8. I agree.