
(1945) 12 CAL CK 0011
In the Calcutta High Court
Case No : Appeal No. 90 of 1943

Taferaddi Molla alias Tofer Mulla

APPELLANT

Vs

Ratikanta Das and another

RESPONDENT

Date of Decision : 21-12-1945

Acts Referred:

Citation : (1945) 12 CAL CK 0011

Judgement

Blank, J.—This is an appeal by the defendant against the concurrent decisions of two Courts in the district of 24-Parganas. In view of the order I am about to pass, it is desirable to indicate the nature of the facts. The plaintiffs' case was that the defendant was the korfa tenant of the suit lands from 1344 to 1346 B.S. on the basis of a kabuliat (Ex. 1) executed in Ashar of 1344. The learned Munsif states :

On the expiry of the term of the Kabuliyat in Chaitra of 1346 (B. S.) the suit lands were given in the possession of the plaintiffs.

2. It is possible that this is not an accurate representation of para. 4 of the plaint, but that will be a matter for the trial Court on remand. The plaint continued that the plaintiffs had been dispossessed by the defendant in Sraban 1347 B. S. The defendant contested the allegation of giving up possession at the end of chaitra 1346 B. S. and averred that on the expiry of the term of his kabuliyat, he took korfa settlement of the suit lands from the plaintiffs and executed a kabuliyat which has been accepted by the plaintiffs. Both Courts found as fact that the latter kabuliat (Ex. B) was not accepted by the plaintiffs. This matter is no longer open between the parties. The learned Munsif, at page 5 of the paper book, states follows:

The question of possession during the months of Baisak and Jaistha of 1347 by the defendant or by the plaintiffs, as alleged by them and the question of dispossession in Sravan, 1347, by the defendant is immaterial in this case inasmuch as both parties admitted that there was practically no overt act of possession in Baisakh or Jaistha, 1347 in the suit lands as the said months are

not season of ploughing or doing any other acts of possession. Hence the evidence on this point on both sides need not be discussed.

3. The learned Additional Subordinate Judge, on the question whether the plaintiffs were entitled to get khas possession of the suit lands after ejecting the defendants there from, held as follows :

Under the terms of kabuliyat, Ex. 1, the plaintiffs are entitled to get khas possession in these suit lands after expiry of Chaitra, 1346 B. S. without any notice to defendant. The defendant has failed to prove that he is a tenant (korfa) for the suit lands for any year, subsequent to 1346 B.S. So the plaintiffs must get khas possession in the lands after ejecting the defendant therefrom.

4. The learned advocate for the appellant contends that his client is protected by proviso 2 to S. 48C, Ben. Ten. Act. Unfortunately, this matter has not been gone into by the Courts below, and it is impossible to deal with it in this Court on the findings arrived at by the Courts below. It is essential on the expiry of a written tenancy to consider in circumstances such as the present whether the tenant has or has not given up possession. The learned Munsif should have come to a finding on this point. The right given by proviso 2 to S. 48C, Ben. Ten. Act, is specially provided for cases such as the present, appears to be prima facie and on the collapse of the defendant's case of a second kabuliyat the question of his rights if any under the proviso remained. It is, therefore, necessary to remand the case to the trial Court for decision on this point. It will be for the trial Court to consider whether the plaintiffs may be permitted to amend their plaint. The judgments and decrees of the Courts below are, therefore, set aside and the case is remanded to the trial Court for further consideration in the light of the above observations. The parties will be at liberty to adduce further evidence on the matter of possession if so advised. The costs will abide the final result. Rule 522 of 1945 is discharged without any order as to costs.