

(1919) 03 CAL CK 0033
In the Calcutta High Court

The Hon"ble Maharaja Manendra Chandra Nandi

APPELLANT

Vs

Narendra Chandra Lahiri

RESPONDENT

Date of Decision : 11-03-1919

Acts Referred:

Citation : 52 Ind. Cas. 13

Hon'ble Judges : Ernest Fletcher, J;Cumming, J

Bench : Division Bench

Judgement

Ernest Fletcher, J.—This appeal is preferred by the plaintiff against the decision of the learned Subordinate Judge of Rangpur, dated the 31st August 1916. The plaintiff sued for rent, first of all, for 9 months of the year 1318 and for the whole of the year 1319. That part of the claim has been decreed in full, and no question arises in this appeal with regard to it. The other part of the claim was for the years 1320 and 1321 and the rent in respect thereof was sued for on the basis of a compromise decree. That compromise decree was entered into in a former rent suit which the plaintiff brought for the years 1316, 1317 and the first 3 months of the year 1318. What had been the original state of affairs was this. There had been a demise to the defendant of 1,700 bighas of land, the rent being calculated at 12 annas a bigha, namely, Rs. 1,175. In the former rent suit, the defendant said that he was entitled to an abatement of rent and the reasons why he said that he was entitled to an abatement were, first, dispossession by title paramount of a portion by another Zemindar and, secondly, diluvion of another portion. The compromise provided that the rent for the 9 months of 1318 and the whole of 1319 should be Rs. 1125 for the five plots ga, gha, una, aha, and ja, on the map filed with the petition of compromise. That is the rent that has been decreed from 1320, and both parties agree that the document in the vernacular means that from the beginning of the year 1320, the rent of the 1,520 bighas of land of plots ga, gha, una, cha and ina, marked on the map was to be Rs. 1,140 and it was stated that khas possession of the plot ina, had been delivered to the defendant. The whole dispute in this case turns on this plot Ina. It will be noticed that the demise in the petition of compromise is of these plots

ga, gha, una cha and ina, at an entire rent of Rs. 1,140. It is impossible to say what portion of that rent is attributable to plot ina. One may be able to guess; but no one can say that each and every portion of this sum of Rs. 1,140 does not issue out of plot ina, just as much as all other plots. It is one entire rent for the demise of all these plots. What has been found as a fact and it is not open to doubt is that the tenant has never been inducted into possession of this plot ina by the landlord. The statement that he has been given khas possession is wholly inaccurate, and the landlord took no steps in order to carry out that term of the arrangement. The learned Judge held that, in the circumstances, the landlord not having performed his duty by inducting the defendant into possession of plot ina, according to the terms of the demise, the rent was suspended. That is the point that has been urged against in this appeal. In England there is no difference between the case where the landlord has ousted the tenant from a portion of the holding and the case where the landlord has let out the property to the lessee having already put an earlier and prior lessee in possession of it, and in such cases the rent is suspended. It is only necessary to refer in support of that statement to the case of *Neale v. Mackenzie* (1836) 1 M.&W. 747 : 2 Cale. 174 : 6 L.J. Ex. 263 : 150 E.R. 635 : 46 R.R. 478. That was a decision of the Exchequer Chamber and the case has always been considered as good law. It is said that these decisions should not be applied to the system of law in this country and reliance has been placed on the decisions in *Annada Prosad Mukhopadhyaya v. Mathura Lal Nag Mazumdar* 2 Ind. Cas. 123 : 9 C.L.J. 585 : 13 C.W.N. 702. The statement relied on is to be found at page 589 of the report. That decision may be a good decision in the circumstances of that particular case. But the rule that rent is suspended on account of the dispossession of the tenant by the landlord from a portion of the holding has been recognised in a number of cases in this Court and, in my opinion, it is not open to question now. It may be noted that the case of *Stokes v. Cooper* (1814) 3 Camp. 514n : 14 R.R. 829 is relied on by one of the learned Judges who decided the case of *Annada Prosad Mukhopadhyaya v. Mathura Lal Nag Mazumdar* 2 Ind. Cas. 123 : 9 C.L.J. 585 : 13 C.W.N. 702 has been disapproved, first of all, in the case of *Smith v. Raleigh* (1814) 3 Camp. 513 : 14 R.R. 829. It is quite true that it is only a ruling of a *Nisi Prius*. But the Judge who made that ruling was Lord Ellenborough, C.J. It has also been disapproved in another case--I have not got the reference at present at hand--and the learned Judge who disapproved it was Baron Parke. It cannot be considered that the ruling of the Judge at *Nisi Prius* in *Stokes v. Cooper* (1814) 3 Camp. 514n : 14 R.R. 829 is good law. However, the rule has been recognized in India that in a case where the lessor has dispossessed the lessee from a portion of the holding, the rent is suspended and I see no reason why the other portion of the same rule should not be applied, namely, that where the landlord having let out a portion of the land to an earlier lessee lets it out again with other lands to a subsequent lessee the rent is also suspended. The landlord having failed to perform the duty he had undertaken, the rent ought to be suspended. I see nothing inequitable in holding this. I agree with the conclusion arrived at by the learned Judge of the Court below. The present

appeal, therefore, fails and must be dismissed with costs. We assess the hearing fee at one hundred and fifty rupees.

Cuming, J.

2. I agree.