

(1899) 06 CAL CK 0016
In the Calcutta High Court

Upendra Chandra Singh

APPELLANT

Vs

Rachhea Singh

RESPONDENT

Date of Decision : 07-06-1899

Acts Referred:

Citation : (1900) ILR (Cal) 239

Hon'ble Judges : Rampini, J;Handley, J

Bench : Division Bench

Judgement

Rampini and Handley, JJ.—The plaintiff sues the defendant for the rent of certain ferry ghats. The plaintiff is proprietor of a 24 annas share of the taluq Gangapur, in which the ghats are situated. The defendant admits that he took a lease of the 12 annas share of these ghats from the plaintiff's co-sharer Krishto Kamini Dassi, and contends that he and the plaintiff's servants used to collect the ferry tolls in the proportion of 12 1/2 and 3 1/2 annas. The Subordinate Judge has, however, found that the defendant collected the whole 16 annas of the ferry tolls during the period in suit. He further finds that the defendant entered into no contract with the plaintiff for the collection of these tolls and the payment to him of rent, but nevertheless holds that he has made himself the plaintiff's tenant in respect of these ghats by use and occupation, and has accordingly given the plaintiff a decree for the rent sued for.

2. The defendant appeals, and on his behalf it is urged that the rulings upon which the Subordinate Judge relies are rulings under the rent law and relate to the rent of agricultural land. The rulings in question are Nityanund Ghose v. Kissen Kishore (1864) W.R 82, and Lalun Monee v. Sona Monee Dabee (1874) 22 W.R., 334. On the other hand, the pleader for the appellant cites the cases of Surendra Narain Singh v. Bhai Lal Thakur I.L.R (1895) ., 22 Cal., 752, and Lukhee Kanto Dass v. Sumeeruddi Lusher (1874) 13 B.L.R., 243: 21 W.R., 208, and contends that under them the plaintiff is not entitled to compensation for use and occupation of the ferry ghats, as he did not ask for such compensation in his plaint. It is clear, we think, that the rulings relied on by the Subordinate Judge do

relate to agricultural lands and lay down how an implied tenancy in respect of such land may be constituted. But the subject of the present suit is not agricultural land. The suit relates to ferry tolls, to which it would appear the provisions of the rent law are not applicable; [see Hari Mohan Sirkar v. Moncrieff (1870) 9 B.L.R., Ap. 14. The cases of Nityanund Ghose v. Kissen Kishore (1864) W.R., Sp. No. Act X, 82, and Lalun Monee v. Sona Monee (1874) 22 W.R 334 therefore, would not seem to justify the decree which the Subordinate Judge has given the plaintiff in this suit.

3. Then, in the case of Lukhee Kanto Dass Chowdhry v. Sumeeruddi Lusker (1874) 13 B.L.R.243: 21 W.E., 208, it was held that if a landlord sued for rent, he could not recover damages for use and occupation unless he made a claim to this effect in his plaint. This case was followed in that of Surendra Narain Singh v. Bhai Lal Thakur I.L.R (1895) ., 22 Cal., 752, which was a suit for the rent of a hat, and in which it was found that there was no lease, and consequently the plaintiff could not recover rent. The learned Judges who decided this case declined to allow the plaintiff a decree for damages for use and occupation, as to do so, it was said, would amount to allowing an amendment of the plaint in such a way as to convert a suit of one character into a suit of another and an inconsistent character.

4. The plaintiff in this suit, it is evident, never asked for anything but rent, and that being so, we consider the Subordinate Judge was not justified in giving him the decree he has given him. We accordingly allow this appeal and set aside the decree of the Subordinate Judge with costs.