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Hari Mondal and Others Vs Durjodhon Mandal and Others

Court: Calcutta High Court

Date of Decision: Dec. 3, 1925

Acts Referred: Bengal Tenancy Act, 1885 â€" Section 85

Citation: AIR 1926 Cal 882 : 94 Ind. Cas. 661

Hon'ble Judges: Cuming, J; B.B. Ghose, J

Bench: Division Bench

Judgement

1. In the suit out of which this appeal has arisen the plaintiffs sued for recovery of khas possession of some 4 bighas of land from the possession of

the defendants Nos. 1 to 4. Their case was that they executed a kabuliyat in favour of defendants Nos. 6 to 9 in July 1919 and, this kabuliyat was

accepted by the landlords defendants Nos. 6 to 9 and they were put in possession and that after being in possession for one year they wore

evicted by defendants Nos. 1 to 9. Defendants Nos. 1 to 4 contested the suit contending that this land formed part of their ancestral jama held

under defendants Nos. 6 to 9. The first Court held that the lease to the plaintiffs contravened the provisions of Section 85 of the Bengal Tenancy

Act, as he held that defendants Nos. 6 to 9 were occupancy raiyats. He, therefore, held the lease void and dismissed the suit. The plaintiffs

appealed to the District Court and the learned Subordinate Judge held that the defendants Nos. 1 to 4 claiming as they did under the defendants

Nos. 6 to 9 were estopped from pleading that the lease granted by defendants Nos. 6 to 9 contravened the provisions of Section 85 of the Bengal

Tenancy Act. He also held that defendants Nos. 1 to 4 had obtained no title to this land by the kabuliyat of 1305. He also found that so far as the

share of defendant No. 5 was concerned, namely, 2 annas and 8 pies this share had not been leased out to the plaintiffs. He, therefore, granted the

plaintiffs a decree to the extent of 13 annas and 4 pies share of the land.

2. Defendants Nos. 1 to 4 have appealed to this Court and their contention is that the kabuliyat executed by the plaintiffs is not to be used in their

favour and, therefore, this kabuliyat does not estope the lessors of the plaintiffs from denying their title. Their argument being that the kabuliyat was

executed by the plaintiffs and not by their lessors and that, therefore, the statement contained in it does not bind the lessors. The learned

Subordinate Judge has found that the lessors accepted and acted upon the kabuliyat and hence they would be clearly bound by the statement

contained in it. If, therefore, the lessors of the plaintiffs could not be heard to say that the lease granted to the plaintiffs contravenes the provisions

of Section 85 of the Bengal Tenancy Act it would not be open to defendants Nos. 1 to 4 who claim under the defendants Nos. 6 to 9 to question

the validity of the lease granted by defendants Nos. 6 to 9. They would be equally estopped with defendants Nos. 6 to 9 the lessors of the

plaintiffs claiming as they'' do under these defendants from denying the validity of the lease.

3. The result is the appeal must fail and is dismissed with costs.