
(1919) 07 CAL CK 0004

Calcutta High Court

Case No: None

Sheikh Nasarat

APPELLANT

Vs

Kali Das Chakerbutty

RESPONDENT

Date of Decision: July 22, 1919

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 147A, 18

Citation: 54 Ind. Cas. 750

Hon'ble Judges: Syed Shamsul Huda, J

Bench: Single Bench

Judgement

Syed Shamsul Huda, J.

This is a suit for ejectment in accordance with the provisions of Section 49 of the Bengal Tenancy Act. The plaintiff's case is that he is a raiyal and the defendant is his under raiyat, and that the defendant holds under a written lease the term of which has expired. The first Court held that the plaintiff was a tenure-holder and the defendant was an occupancy raiyat, and upon that view of the case dismissed the plaintiff's suit. In appeal the decree of the first Court was reversed.

2. It appears that in the Record of Rights the defendant is described as an occupancy raiyat. The learned Subordinate Judge who disposed of the appeal was of opinion that the presumption arising out of this entry had been rebutted by the fact that there was other evidence showing that the plaintiff was a raiyat at fixed rent and that the defendant was necessarily an under raiyat and liable to ejectment.

3. It is argued on behalf of the defendant-appellant that having regard to the provisions of Section 18 of the Bengal Tenancy act the plaintiff, even assuming that he was a raiyat, being a raiyat at fixed rent is in the position of a tenure holder in relation to his sub-lessees. In support of this contention reliance has been placed on [Section 18 of the Bengal Tenancy Act and on a decision of this Court reported as Hari Mohan Pal v. Atal Krishna Bose 23 Ind. Cas. 925 : 19 C.W.N. 1127. It was held in that case that a raiyat

holding at fixed rent has authority to grant a permanent lease. It seems to me that if he has such authority, there is no reason why a person holding land under him be debarred from acquiring a right of occupancy. In this case the finding of the first Court is that the defendant has been in possession for a long time and that finding has not been displaced by the lower Appellate Court. It has been argued on behalf of the respondent that Section 18 has the effect of placing a raiyat holding at a fixed rent in the same position as a tenure-holder only in respect of transfer and succession and that the grant of a sub lease does not amount to a transfer. It seems to me that the grant of a sublease is a transfer of an interest in the holding and, therefore, Section 18 applies. Upon this view of the case I hold that the Court below was wrong in holding that the presumption arising from the entry in the Record of Rights was rebutted by proof that the plaintiff was a raiyat at fixed rent.

4. It has also been argued on behalf of the respondent that there was a litigation in the year 1910 or 1911 between the plaintiff and the defendant, that in that suit plaintiff sought to evict the defendant from the holding, that the defendant accepted the position of Korfa tenant or under-raiyat and agreed to leave at the expiry of the term from that date, and in pursuance of that compromise there was the kabuliyai executed by the defendant in favour of the plaintiff upon which the present suit is based. It is contended that the compromise decree is binding on the parties. This compromise decree does not seem to have been relied upon by the plaintiff in the Court below. The document is not mentioned in the judgment of the lower Court, and the reason probably was that it was not shown that any decree was passed in conformity with Section 147A of the Bengal Tenancy Act. The learned Judge who passed the decree does not appear to have recorded in writing that in his opinion the terms of the compromise were such that if embodied in a contract they could be enforced under the Act. If the defendant had been in possession of the holding for a long time and had acquired a right of occupancy, it is clear that he could not by any agreement contract himself out of that right, nor could a compromise decree not passed in accordance with law have that effect.

5. On these grounds I decree this appeal and dismiss the plaintiff's suit with costs throughout.