

(1937) 04 CAL CK 0004

Calcutta High Court

Case No: Appeal from Original Order No. 545 of 1935

Jamadar Singh

APPELLANT

Vs

Kanai Das Babaji Mohunt Guru

RESPONDENT

Date of Decision: April 9, 1937

Final Decision: Dismissed

Judgement

Mitter, J.

The Plaintiff who is the shebait of an Idol granted a lease of properties of the deity for 7 years in favour of the Defendant by a registered instrument executed on the 17th Baisakh, 1339. The rent reserved by this lease was Rs. 50 a month. The lease was granted in consideration of a sclami of Rs. 2,500, and the lease recited that the said sum had been paid by the lessee to the lessor by way of adjustment of certain debts due by the lessor to the lessee. In pursuance of this lease the Defendant was put in possession and he has been in possession till the appointment of the Receiver was made by the order of the Court, dated the 17th September, 1935, the correctness of which is the subject-matter of this appeal. On the 30th April, 1935, the Plaintiff instituted a suit against the Defendant. In the said suit he alleged that the lease was obtained by the Defendant from him fraudulently, one of the specific grounds alleged being that there was an agreement to pay the selami of Rs. 2,500 cash down. In the prayer the Plaintiff asked for cancellation of the said lease, for recovery of khas possession, and for mesne profits on that footing. He also claimed a certain sum by way of arrears of rent. During the pendency of this suit the Plaintiff filed on the 6th September, 1935, an application for the appointment of a Receiver. The Plaintiff and the Defendant are up-country people. The aforesaid lease is written in Bengali language but there is an endorsement on it that the document was explained to the executant by the writer. When the matter of appointment of a Receiver was taken up, no evidence was led by the Plaintiff which would establish a prima facie case to support his prayer for cancellation of the lease. In fact the learned Subordinate Judge's order does not deal with this aspect of the case at all. The learned Subordinate Judge apparently proceeded upon the footing that there

were arrears of rent due and by reason of the rent remaining in arrears, the sheba-puja of the deity were suffering. In discussing the question as to whether the Plaintiff had a prima facie right or not, he only considered the question as to whether the Plaintiff had transferred his right to get the rent to Hari Mohan or not. But it would not meet the requirements of the case even if there had not been the transfer by the Plaintiff of his right to receive rent to Hari Mohan, for the Plaintiff had to establish a prima facie case for the cancellation of the lease. However, the learned Judge appointed a Receiver on the footing that the Defendant had not been paying the stipulated rent to the Plaintiff. In our judgment this order of the learned Judge cannot be supported and for the following reasons:

If there were arrears of rent due from the Defendant to the Plaintiff, that is not a ground by itself for the appointment of a Receiver. This position has been made clear in the case of Dharendra Krishna Deb v. Surendra Krishna Nundi 34 C. W. N. 440 (1929). The ground therefore given by the learned Subordinate Judge in support of his order cannot, in our opinion, be sustained and inasmuch as there is nothing on the record which would indicate that the Plaintiff had established even a prima facie case for the cancellation of the lease, we do not see any ground whatsoever made out for disturbing the possession of the Defendant which began under a legal origin, a right derived from the Plaintiff and unless that title is disturbed or some ground established for shaking that title, we do not see how can the possession of the Defendant as lessee under the Plaintiff be disturbed by the appointment of Receiver.

2. We, accordingly, set aside, the orders of the learned Subordinate Judge complained of and dismiss the Plaintiff's application for the appointment of a Receiver.

3. The Appellant must have from the Respondent (Plaintiff) the costs incurred by him in this Court as well as in the lower Court, costs of this Court being assessed at two gold mohurs. Let the record in this case be sent down as early as possible.

Nasim Ali, J.

I agree.