Chandra Kanta Das and Others Vs Ramanath Barman

Court: Calcutta High Court

Date of Decision: May 3, 1910

Citation: 6 Ind. Cas. 478

Hon'ble Judges: Mookerjee, J; Carnduff, J

Bench: Division Bench

Judgement

1. This is an appeal on behalf of the defendants in an action for rent commenced on the 15th April 1905. The plaintiff-respondent alleged in the

Court of first instance that the defendants were in occupation of 500 bighas of land under a reclamation lease granted in favour of their

predecessors on the 21st May 1892, but that they had defaulted in the payment of rent at the rate of Re. 1 per bigha per annum, as settled by the

contract for seven-eighths of the year 1308 and for the whole of the years 1309, 1310 and 1311, i.e., from June 19ul to April 1905. The plaintiff

accordingly prayed for a decree for over Rs. 2,000 together with damages and costs. The defendants admitted the tenancy, bat pleaded that,

subsequent, to the grant of the lease in favour of their predecessors, the plaintiff created another tenancy in favour of certain persons who may be

called the Ghoses, first by an amalnamah dated the 7th December 1893, and subsequently by a lease dated the 7th August, 1896; that portions, of

the land covered by the lease of the 21st May 1892 were included in the subsequent document in favour of the Ghoses; that as a result, the

Ghoses had dispossessed them of a substantial portion of the lands comprised in their tenancy, and that they were in occupation of not more than

340 bighas of land. The defendants contended that, in the events which had happened, the entire rent was suspended by reason of unlawful

disturbance of their possession by their landlord, the present plaintiff. The defendants further stated that they had already commenced two actions

on the 14th May 1904, against the plaintiff and the subsequent lessees for declaration of title to the lands from which they had been dispossessed,

and for recovery of possession and mesne profits. Under these circumstances by consent of parties, the Court directed that the rent suit as well as

the two title suits should be heard together. In the Court of first instance, the Subordinate Judge found upon the evidence that the lands, claimed by

the present defendants as plaintiffs in the title suits, were not comprised in their tenancy and that consequently the defendants could not be said to

have been evicted by their landlord from any portion of their holding. In this view the original Court made a decree for rent in favour of the plaintiff

in respect of 329, bighas, 1 cotta and 14 chittaks, of land and at the same time dismissed the title suits. The tenants thereupon preferred three

appeals to the District Judge, two against the decrees of dismissal in the title suits, and one against the partial decree in the favour of the landlord in

the rent suit. The District Judge held upon the evidence, as also upon a construction of the leases granted by the landlord that the lands claimed by

the tenants were included in their tenancy, and that they were entitled to a decree for possession of an area which would bring up the total to 500

bigha is. In this view he made in the title suites decrees for possession of the disputed lauds with costs against the landlord and the subsequent

lessees, and made the latter alone liable for mesne profits for three years antecedent to the suits and for the period which might intervene between

the commencement of the suits and the delivery of possession. When the District Judge came to consider the appeal in the rent suit, he held that, as

the tenants had obtained decrees for recovery of possession of the lands from which they had been dispossessed together with mesne profits, they

were liable to pay the entire rent claimed but as the landlord had not preferred any appeal or filed any cross-objection against the decree of the

Court of first instance, he dismissed the appeal of the tenants as wholly unreasonable. In so far as the decrees in the two title suits are concerned,

we are not called upon to deal with them as they have not been challenged by. way of appeal and have been allowed to become final. In so far,

however, as the suit for rent is concerned, the tenants have appealed to this Court and on their behalf it has Been contended that, as upon the facts

found the tenants are conclusively proved to have been evicted from a substantive portion of the lands of their tenancy the entire rent has been

suspended, and that the mere fact that they have succeeded in their suits for recovery of possession and have obtained decrees for mesne profits

against the lessees of their landlord, does not negative this defence which was undoubtedly valid when the suit for rent was commenced. In support

of this proposition, reference has been made to the case of Kadumbinee Dossia v. Kasheenauth Bwas 13 W.R. 338, which was accepted as good

law in the cases of Bhunput Singh v. Mahomed Kazim Ispahain 24 C. 296 and Mahomed Majid v. Mahomed Ashan 23 C. 205. It has been

argued, on the other hand, that the landlord is not proved to have had any hand in the eviction of the tenants, that he is not responsible for the

misconduct, if any, of the subsequent lessees and that in any event the doctrine of suspension of the entire rent by reason of partial eviction ought

not to be extended to cases of boundary disputes among holders of reclamation leases. Before we examine the validity of the arguments addressed

to us on both sides, it is necessary to determine precisely the part, if any, taken by the landlord in the eviction of the present appellants.

2. It appears from an examination of the records of the two title-suits commenced by the tenants that the latter asserted in the clearest possible

terms that the disputed lands were comprised in the lease granted by the landlord in favour of their predecessors on the 21st May 1892; that with a

view to obtain a higher rental the landlord had granted a lease of the same land on the 7th December 1893 an4 7th August 1896 to the Ghoses at

the rate of Re. 1-8-6 per bigha per annum: that the Ghoses had subsequently, in concert with the landlord, dispossessed them; and that they were

consequently entitled to a decree in each suit for possession and mesne profits. The Ghoses resisted the claim on the ground that the disputed lands

were not included in the lease of 21st May 1892, that they had acquired a good title, and must, therefore, be deemed to have lawfully entered into

occupation. The landlord defendant not merely supported the Ghoses but denied the title of the lessees of 1892 and alleged that they had had no

possession at all of the disputed lands. Not only did he thus support the case of the subsequent lessees by his written statement, but he tried to

advance it by additional evidence. In substance he identified himself completely with the subsequent lessees. The position taken up by him was that

the claims of the lessees of 1892 were entirely unfounded and that he acted within his rights when he granted the subsequent lease and placed the

Ghoses in possession of the lands. These facts are established conclusively from the records of the title-suits which we have carefully examined.

The question, therefore, arises what is the precise position of the landlord plaintiff in this rent-suit? It cannot be disputed, in view of numerous

decisions of this Court amongst which reference may be made to Dhunpat Singh v. Mahomed Kazim 23 C. 205, Harm Kumari v. Purna Chandra

28 C. 18 and Rasseswari v. Sawendra Mohan 5 Ind. Cas. 105, that if there has been an eviction by a landlord of his tenant from even a part of the

demised premises, the entire rent is suspended, even though the rent has been assessed at a known rate per unit of area of measurement. Further,

as explained by this Court in the case of Rai Charan Sar v. Administrator General of Bengal 2 Ind. Cas. 169 : 9 C.L.J. 58 : 36 C. 856 : 13

C.W.N. 853, this doctrine is based upon weighty reasons, though it may, at first sight, appear to be unnecessarily harsh upon the landlord and

unduly lenient towards the tenant, who by reason of its application escapes payment of rent even in proportion to the area of which he continues to

hold possession. But the reason in support of the rule is conclusive, whether we adopt the one given in the old cases, that no man ough to be

encouraged to injure or disturb the possession of his tenant, whom by the policy of law he ought to protect and defend or accept the one set forth

in modern cases, that if the lessor enters into a part by wrong, he shall not so apportion his own Wrong as to enforce the lessee to pay anything for

the residue. In other words, as Lord Chief Baron Gilbert puts it, if the contrary view were adopted, it would be in the power of the lessor to

Resume any part of the land, against his own engagement and contract and so by taking that which lies most commodious for the tenant, render the

remainder in effect useless, or put him to expense and trouble, to restore himself to such part by course of law. But the learned Vakil for the

landlord respondent has suggested that the doctrine ought not to be extended to cases of boundary dispute between, holders of reclamation leases,

as the boundary may really be difficult to ascertain, and a landlord, however honest he may be, may find himself deprived of his entire rent by

reason of an innocent mistake on his part. It is not necessary for us to express any opinion as to whether considerations like these should furnish an

exception to the rule; because in the case before us, it is manifest that the landlord deliberately procured the eviction of his first lessees, from a

substantial portion of the lands demised to them, solely with a view to increase his own profits. In this view it is unnecessary to discuss the case of

Annoda Proshad v. Mathura Lal 9 C.L.J. 585 : 13 C.W.N. 702 : 2 Ind. Cas. 123, to which our attention has been invited, but it is worthy of

remark that the case of Stokes v. Cooper (1814) 3 Campbell 514 : 14 R.R. 829, upon which reliance was apparently placed on behalf of the

appellants in that case, can no longer be treated as good law as is conclusively shown by the eases of Reeve v. Bird (1834) 1 C.M. & R. 31 : 4

Tyr. 612 : 3 L.J. Ex. 282; Upton v. Townend (1853) 17 C.B. 30 : 104 R.R. 562 and Rai Charan v. Administrator-General 2 Ind. Cas. 169 : 9

C.L.J. 579 : 36 C. 356 : 13 C.W.N. 853. If, therefore, we find as we do here, that the eviction of the first tenant was procured by the landlord by

the grant of a subsequent lease it cannot be disputed that the landlord is responsible, because he cannot be allowed by the intervention of an agent

or sub-lessee to escape liability for his wrongful act, Kadumbinee Dossi v. Kasheenauth Biswash 13 W.R. 338, though it may be conceded that

the position may be different if the, landlord is not a party to the dispossession directly or indirectly or his act does not result in actual interference

Kali Prosanno v. Mathura Nath 34 C. 191; Gopal Chandra v. Chowdhuri Krishna Chandra 9 C.L.J. 595 : 4 Ind. Cas. 63 and Sri Mati Moni v.

Kala Ghand Ghrami 9 C.W.N. 871.

3. The sole question, therefore, which remains for consideration is, whether the fact of the subsequent decrees for possession obtained by the

tenants does in any way improve the position of the landlord. It has been contended by the learned Vakil for the tenants appellants that this

circumstance makes no difference while the contiary view has been strenuously maintained on behalf of the landlord respondent. The case of

Kadumbinee Dossi v. Kasheenauth Biswas 13 W.R. 338, however, clearly supports the contention of the appellants though there has been some

divergence of judicial opinion as to the precise effect of this decision. In the case of Mahomed Majid v. Mahomed Ashan 23 C. 205, it was

assumed that the case is an authority for the proposition that if a tenant has been dispossessed by his landlord1 and has subsequently obtained a

decree for recovery of possession and mesne profits, the landlord when he brings a suit for recovery of arrears of rent of the property for the

period during which the tenant had been dispossessed, is entitled, for purposes of limitation, to have the time calculated against him only from the

date of ascertainment of the mesne profits. On the other hand, in the case of Dhunput Singh v. Mahomed Kazim 24 C. 296, the decision in

Kadumbinee Dossi v. Kasheenauth Biswas 13 W.R. 338 was treated as an authority for the proposition that, where the tenant defendant has been

dispossessed of part of the lands leased to him by a third party to whom the plaintiff landlord had given a lease of the same land and assisted him in

the dispossession, the landlord is precluded from suing the tenant for rent of the period of such dispossession even though the tenant has recovered

a decree for possession and mesne profits. We have examined the original paper-book in the case of Kadumbinee Dossi v. Kasheenauth Biswas

13 W.R. 338 and have found from the proceedings in the Courts below that the effect of the decision was correctly stated by Ghose and Hill, JJ.,

in Dhunput Singh v. Mahomed Kazim Ispahain 24 C. 296 and that its true effect was not accurately appreciated by Prinsep and Ghose, JJ., in

Mahomed Majid v. Mahomed Ashan 23 C. 205. In fact, that decision is precisely on an fours with the case now before us. There, as here, a

tenant was dispossessed by a landlord who had granted a subsequent lease of the lands previously demised. The tenant sued for recovery of

possession with mesne profits and was, successful.

4. The landlord then commenced an action for recovery of rent of the period in respect of which mesne profits had been allowed. This Court held,

in affirmance of the decision of the District Judge, who had differed herein from the original Court, that the right of the plaintiff to recover rent,

which he had lost by his wrongful act (because the entire rent had been suspended by partial eviction), was not revived when the tenant obtained a

decree for recovery of possession and mesne profits. The learned Judges observed that the position of a man loft in peaceful occupation of his land

and the position of a man ejected and subsequently recovering, a decree for possession and mesne profits are sot the same. Apart from this

reason, it may be observed that the view taken by the learned Judges is obviously well-founded on principle. As soon as the landlord evicted the

tenant, the entire rent was suspended even though the eviction was partial. When, therefore, the landlord commenced this action for recovery of

rent he had no subsisting cause of action enforceable in law. The mere circumstance that the tenants subsequently obtained decrees for recovery of

possession and mesne profits cannot entitle the landlord to obtain a decree on the basis of a claim, which had no existence at the date of the

commencement of the action. But we may add that even if the decrees for possession and mesne profits had been obtained before the suit for rent

was commenced, the position of the landlord won Id not have been improved, as is clear from the case of Kadumbinee Dossi v. Kasheenauth

Biswas 13 W.R. 338. The learned Vakil for the respondent, however, suggested that this view was not consistent with principles of justice, equity

and good conscience. We are wholly unable to accede to this contention. When the mesne profits due to the appellants, who have obtained

decrees against the subsequent lessees of their landlord, come to be assessed, it may well be that in so far as lands of which they were deprived

are concerned, allowance may be made in favour of the trespassers for any rent paid by them in respect thereof to the landlord. In other words, in

respect of lands from which the appellants were evicted the landlord may justly be expected to look for payment of rent to the trespassers whom

lie inducted into the lands and they may be entitled, if they have actually paid him rent, to claim a deduction from the mesne profits payable to the

present appellants. The result, therefore, would be that the landlord would ultimately lose the rent of that portion only of the lands from which the

appellants were not evicted. There is, in our opinion, nothing unjust in this position, and the landlord, at any rate, has no room for just complaint

because his difficulty is entirely of his own creation. In fact the doctrine of suspension of the entire rent, by reason of even a partial eviction, does

recognise the position that the landlord may properly be deprived of the whole rent, even though the tenant has been in occupation of a portion of

the lands of the tenancy. The reason assigned by Lord Chief Baron Gilbert in support of this view, is, we think, conclusive, and may be applied

most strongly in the case of reclamation leases. For it is, obvious, that if the landlord deprives the tenants of possession of the position which has

been re-claimed and is then allowed to apportion the rent, he may derive advantage from his own wrongful act, and the tenant may be placed in a

position of considerable hardship and embarrassment. In our opinion, there is no room for reasonable doubt that the conduct of the landlord in this

case fully justifies the application of the doctrine of suspension of the entire rent even though the eviction has been partial and even though the

tenants have subsequently obtained decrees, for possession and mesne profits.

5. The result, therefore, is that this appeal must be allowed, and the decree made by the District Judge, in affirmance of the decision of the original

Court, discharged. The suit will stand dismissed with costs in all Courts.