
(1869) 07 CAL CK 0020

Calcutta High Court

Case No: Special Appeal No. 920 of 1869

Radha Krishna

APPELLANT

Vs

W.C. O'Flaherty

RESPONDENT

Date of Decision: July 9, 1869

Judgement

Kemp, J.

The defendant is the special appellant in this case. It appears that the plaintiff hired a thatched bungalow from the defendant at a monthly rent of 30 rupees. We are not told whether there was any lease executed; but it appears that the negotiations respecting the hiring of the bungalow were carried on between the plaintiff and the son of the defendant. The plaintiff entered the house in the month of August 1867. On the 6th of December or thereabouts the plaintiff lighted a fire in one of the rooms of the house, and the consequence was that owing to the chimney being in an incomplete state, the thatch of the bungalow caught fire, the building was destroyed, and with it the plaintiff's furniture including a billiard table. The plaintiff brings this suit to recover the value of his furniture which he estimates at Rs. 1,396-7 annas, the principal item being the aforesaid billiard table. The plaintiff's case is this that he was not aware until the 6th of December when he lit the fire that the chimney was not built so as to admit of the vent of the chimney passing through the roof; that assuming that the chimney was constructed in a proper manner, he lit the fire; and that as he has been endangered by the defendant's not giving him previous notice of the defect in the chimney, he is entitled to recover the amount claimed.

2. The defendant's answer is to this effect. In his written statement he does not say that he gave any special notice to the plaintiff of the defect in the chimney, but he says that as the plaintiff made certain alterations in the bungalow to suit his convenience, he must have been well aware that the chimney was in an incomplete state, and that therefore the plaintiff was guilty of an act of negligence, and that he must bear the consequences thereof. The first Court dismissed the plaintiff's case, and held that because the plaintiff occupied the bungalow for four months he ought to have acquainted himself with the defect in the construction of the chimney; and that not having done so he has only himself

to blame for the loss incurred. The second Court, the Judge of Patna, has reversed this decision, holding that the tenant, the plaintiff, was fully justified in taking it for granted that the chimney was built in a workmanlike manner; that he had no notice to the contrary from the landlord; and that the tenant, the plaintiff, has been guilty of no act of neglect. The Judge on the question of the amount claimed found that it was a reasonable claim, and gave the plaintiff a decree with costs and interests. I think that the decision of the Judge is a correct one, and that this appeal must be dismissed. The landlord attempted to prove that he had given notice to the tenant of the defect in the chimney, but he completely failed to prove that notice. It seems to me that when the landlord attempted to prove more than he had advanced in his original written statement, he was conscious of the defect in the chimney, and that he ought to have given notice to the tenant of that defect, more particularly as the bungalow is one with a thatched roof. The Judge has found as a fact that the plaintiff was guilty of no act of negligence; and I think that it is but reasonable that a party should assume that where there is a fire-place in a room, and a chimney which admittedly extended at all events to the roof of the house, there was also a proper vent to it. As the finding of the Judge, therefore, is a finding on a question of fact, I would dismiss the special appeal with all costs payable by the special appellant.

Glover, J.

I concur in thinking that this special appeal should be dismissed with costs, because it appears to me that the Judge's finding that the plaintiff was not guilty of any negligence, is a substantial finding of fact with which we could not interfere under any circumstances, in special appeal.