(1880) 05 CAL CK 0004

Calcutta High Court

Case No: None

Sutyabhama Dassee		APPELLANT
	Vs	
Krishna Shunder Chatterjee and Another		RESPONDENT

Date of Decision: May 10, 1880

Citation: (1881) ILR (Cal) 55

Hon'ble Judges: Richard Garth, C.J; Mitter, J

Bench: Division Bench

Judgement

Richard Garth, C.J.
In this case we are unable to agree with the view which the learned Judge has taken.

2. The plaintiff brought her suit under these circumstances: She says, that the defendants sold to her the property in question, of which she is now seeking to recover khas possession, some thirty years ago; that, after they had sold it to her, they became her tenants at a certain rent; that, from that time up to about five years ago, this rent was duly paid; that, upon their ceasing to pay her rent, she demanded it from them, but they then told her they were no tenants of hers, and that she was not their landlord,--in fact they set up an adverse title, and denied that they had ever sold her the land. Consequently, after waiting some time, she brought the present suit to eject them.

3. Upon this, the defendants, not content with their parol disclaimer of the plaintiff''s title, set up in their written statement that the kobala under which they sold this land to her was a false deed; that they never sold the land at all, nor became the plaintiff''s tenants, nor paid her any rent,--in fact, that they never had anything to do with her, and they then set up an adverse title in themselves.

4. Upon this written statement the issues were framed, and the trial proceeded. The Munsif found that the plaintiff''s case was substantially true; that the defendants

had repudiated the plaintiff''s title, and that the plaintiff was entitled to recover possession on that ground.

5. In the course of the trial, the plaintiff proved (in fact it formed part of her case to prove) that, at one time, the defendants, for many years, were her tenants, and paid her rent. It seems that they paid her rent sometimes in money and sometimes in produce.

6. The defendants then appealed to the Subordinate Judge. They again asserted that the defence set up in their written statement was true, and they contested the case again on the issues raised in the Court of first instance. But they contended also in the alternative, that if those issues were found against them, they then had a right to turn round and claim to be the plaintiff''s tenants; and as she (the plaintiff) proved that they had been paying rent to her for so many years, they were entitled to a decree in this suit, upon the ground that they were occupancy-ryots, and that as such they could not be ejected. In fact, they tried to take advantage, of a plea which they had directly repudiated in the Court of the first instance.

7. The lower Appellate Court considered that it was riot competent for the defendants to set up that defence; that, having defended this suit upon the very ground that they were not the plaintiff''s tenants, and had nothing to do with her, they were estopped by their own conduct from claiming to be her occupancy-ryots.

8. In this Court, however, the learned Judge appears to have taken a different view. He seems to think, that as the plaintiff proved in the Court of first instance that, for several years, the defendants had paid her rent, she had misconceived her suit, and that the course she ought to have taken was to have sued the defendants under the Rent Law for rent, and for ejectment in the event of its non-payment. He, consequently, dismissed the plaintiff''s suit with costs.

9. We are quite unable to take this view of the case. It may be, that if the defendants had merely verbally disclaimed their landlord''s title before the suit, and had pleaded their occupancy title when the suit was brought, their parol disclaimer might not have affected their real rights; or even if the defence had been founded upon a bona fide mistake, and they had found out their mistake in the course of the trial, and had applied to withdraw their defence and plead their right of occupancy, it is possible that (subject to any question of costs) they might properly have been allowed to take advantage of their true position.

10. But that certainly was not the case here. The defendants knowingly and wilfully denied their landlord''s title. They repudiated the kobala which they had themselves executed: they tried their best to defeat her rights, and set up an adverse title in themselves.

11. Under these circumstances, we think that, by their own conduct, they have forfeited the right which they now claim, and that the Court ought not to assist

persons who knowingly attempt these frauds.

12. The rule of English law is, that where, by matter of record, a tenant disclaims his landlord''s title, and sets up an adverse title either in himself or in some third party, he thereby forfeits his tenancy. But without laying down any absolute rule here with regard to forfeiture in such cases, we think we are clearly justified in a case of this kind in refusing to allow defendants to change the whole nature of their defence at the last moment, and to set up in a Court of appeal a plea which they had directly and fraudulently repudiated in the Court below; see Dabee Misser v. Mungur Meah (2 C. L. R. 208.) We, therefore, think it right to reverse the decision of the learned Judge of this Court, and to restore the judgment of the Court below. The appellant will have her costs of both hearings in the Court.