

(1880) 01 CAL CK 0004

Calcutta High Court

Case No: None

Bussicklol Mudduck

APPELLANT

Vs

Lokenath Kurmokar

RESPONDENT

Date of Decision: Jan. 23, 1880

Acts Referred:

- Contract Act, 1872 - Section 1

Citation: (1880) ILR (Cal) 689

Hon'ble Judges: Wilson, J

Bench: Single Bench

Judgement

Wilson, J.

This is a suit by an ejected tenant of land in Calcutta against his landlord, in which he claims to be entitled to remove buildings alleged to have been erected on the premises in question by him, or his predecessors, or to be paid compensation in respect of them.

2. The case came on for settlement of issues on the 8th instant, and the issues were settled accordingly. The first issue is: "By what law are the rights of the parties governed,"--i.e., by Hindu law or English.

3. If the case is governed by English law, then it was admitted that the plaintiff's claim fails; if by Hindu law, then there remain other issues to be tried. This question was argued by Mr. Bonnerjee for the plaintiff, and Mr. Mitter for the defendant and I took time to consider my judgment.

4. It appears from the pleadings on both sides that the land in question is in Calcutta, and that the tenancy was one created by express contract. The parties concerned are, and throughout have been, Hindu. By what law are the incidents of such a tenancy governed?

5. The law generally to be applied by this Court within Calcutta is the common law of England, subject to exceptions, qualifications, and additions which it is unnecessary at present to notice. But by Section 17 of 21 Geo. III, c. 70, it is provided, that "inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Gentoos, by the laws and usages of Gentoos."

6. If this proviso applies to the case, then, subject to the other issues remaining to be tried, the plaintiff is *prima facie* entitled to remove the building erected upon the land or to receive compensation: *In re Thakoor Chunder Paramanick* (I.L.R., Sup. 595).

7. The decided cases bearing upon the matter are not numerous. In *Doyal Chand Laha v. Bhoyrubnath Khettry* (Coryton, 117), Phear, J., granted an injunction, restraining the defendant, who had been in occupation of premises in Calcutta) from removing the materials of additional buildings which he said he had built; reserving leave to the defendant to bring a suit within two months to establish a special custom alleged by him, which would authorize his act. In that case, however, the report does not show under what circumstances the defendant had been in occupation, whether as tenant, and if so to whom, or under some independent title. Unless he were tenant, and tenant to the plaintiff or of some one to whose right the plaintiff succeeded, the decision in that case does not bear upon the present, Nor does the report show whether the learned Judge dealt with the case as one governed by English law or by Hindu law. If by the latter, then the decision seems to be overruled by the later Full Bench case of *In re Thakoor Chunder Paramanick* (I.L.R. Sup. 595).

8. The last-mentioned case decided that, according to Hindu law, buildings do not become the property of the owner of the soil on which they are erected, merely because they are erected; but that any one who has built on land which he occupies under any *bona fide* claim of title, is entitled to remove the materials or be paid or them. In *Parbutty Bewah v. Woomatara Dabee* (14 B.L.R. 201) the question was, whether the tenant of land in Calcutta, on which he had erected tiled huts, was entitled to remove them. A custom to remove such erections was proved, and Macpherson, J., upheld the tenant's right to remove. But in that case it was not necessary to decide, nor does it decide anything, as to what the right of a tenant is, apart from evidence of custom.

9. These are the only cases with which I am acquainted bearing at all directly upon the question now raised for decision, and none of them appears to me to decide the question.

10. In the absence of express authority, I am of opinion that a tenancy created by contract is within the words "matters [692] of contract and dealing between party

and party;" see the proviso of Section 17 of 21 Geo. Ill, c. 70.

11. The law as laid down in the Full Bench case referred to when applied to a contract of tenancy, is not inconsistent with anything in the Contract Act (IX of 1872), and therefore is unaffected by it, Section 1.

12. Upon the first issue, therefore, I find that the rights of the parties are governed by the Hindu law as laid down in the case just mentioned. The remaining issues will have to be tried.