

(1868) 09 CAL CK 0009

Calcutta High Court

Case No: Appeal No. 9 of 1868

Prankrishna Dey and Another

APPELLANT

Vs

Biswambhar Sen and Others

RESPONDENT

Date of Decision: Sept. 8, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

We think that the reasons given by Mr. Justice Dwarkanath Mitter in this case are quite correct. The lease gave to the plaintiff a right of possession, assuming that the lessors had a right of possession, but were not in possession. If they transferred the right which they had to the lessee, and the lessee was kept out of possession by the defendants the lessee had a right of suit against the defendants to recover the possession from him. If the lessors had no right of possession, as for instance, if they were barred by limitation, they could not convey to the plaintiff that to which they themselves were not entitled, and the suit would, of course, fail on the ground that the lessors had nothing which they could convey. It is said that the lessors ought to have been made co-plaintiffs, but the Court cannot compel a man to become a plaintiff against his will. The judgment of the senior Judge appealed from is reversed, and the case is remanded to the lower Appellate Court to be tried on the merits. We express no opinion as to whether, under the circumstances, the plaintiff is entitled to a decree against the lessors. His object is to obtain possession from those who keep him out of possession.

2. The appellants will be declared entitled to the costs of the appeal to the Division Bench and the costs of this appeal.