

(1868) 12 CAL CK 0013

Calcutta High Court

Case No: Speal Appeal No. 888 of 1868

Mrityunjaya Sirkar

APPELLANT

Vs

Gopal Chandra Sirkar and Others

RESPONDENT

Date of Decision: Dec. 17, 1868

Judgement

Loch, J.

We do not concur in the Judge's reasons for coming to the conclusion he has done, still we think his order must be affirmed. In special appeal, the plaintiff alleges that the Judge is wrong in holding that the law required his purchase to be registered in the zamindar's office, for as he is a cultivating ryot, no registration is required, he not being the holder of a tenure intermediate between the zamindar and the cultivator. This contention is, however, at once contradicted by the fact admitted by plaintiff that he holds kabuliats from tenants under him for the lands in question.

2. He then goes on to urge that even if registration were necessary, the zamindar has condoned any omission on the part of the plaintiff by receiving rent from him; and he refers to several deposits of rent made by him into the Collector's office, on account of this tenure, from 1862 to 1865, which he avers the zamindar took away. On referring, however, to the mode in which these deposits are entered, we find that they have been made in the joint names of Jahiruddin, Mrityunjaya, and Kali Kumar, but there is nothing to show what was the particular interest belonging to plaintiff in the tenure. Nor in the declaration made by the plaintiff's agent u/s 5, Act VI, 1862 (B.C.) is anything disclosed as to the plaintiff's status; nor is it shown to us that any notice, in which the plaintiff claimed to be the purchaser of the tenure, was served on the defendant, so that even if defendants have, as alleged, taken all the money in deposit, it is impossible to say that he took it knowing that plaintiff had any interest in the tenure, or that he was thereby admitting plaintiff's title as a tenant. We think that when a party wishes to make known to the zamindar that he has a right to a tenure, the rent of which the zamindar refuses to take from him, he should distinctly state what is the interest he claims, and the notice to the zamindar should comprise this information. It is not sufficient for a man wishing to protect his

special interest, of which the zamindar may have no knowledge, to put money into the Collector's office in the name of the recorded tenants along with his own, without stating what his claim is, for, unless he do so, the zamindar is not obliged to enquire as to his status. The payments, as made by plaintiff, might have been voluntary payments, or payments, such as that of a mortgagee to save his own interest, which a zamindar is not bound to recognize. We think, therefore, plaintiff has failed to prove the acceptance of rent as condoning his omission to register the tenure. We think the Judge is quite wrong in holding that the acceptance of rent by the zamindar would not be a sufficient acknowledgment of the plaintiff as a tenant, and would not cure the defect of non-registration. We think if the zamindar took rent from plaintiff, as holder of the tenure, he could not afterwards draw back and ignore his position in any suit for rent, he might bring. Lastly, it is urged that no balance was due when the suit for rent was brought. This is not correct. There was a balance, and the decree given shows that there was a balance. The special appellant, though, tried to shift his ground, saying that there was no arrear due when the tenure was sold, beyond a trifle for costs of suit and expenses of execution, there was a balance existing for which the tenure was liable to be sold, and it is impossible to say that this balance consisted of costs only. I think the special appeal should be rejected with costs.