(1925) 06 CAL CK 0050

Calcutta High Court

Case No: None

Jnanendra Nath Biswas and Another		APPELLANT
	Vs	
Jogendra Nath Pal and Others		RESPONDENT

Date of Decision: June 12, 1925

Acts Referred:

- Limitation Act, 1963 - Section 18

Citation: AIR 1926 Cal 772 : 91 Ind. Cas. 191

Hon'ble Judges: Ewart Greaves, J; B.B. Ghose, J

Bench: Division Bench

Judgement

B.B. Ghose, J.
This is fan appeal by, the plaintiffs against the judgment and decree of the Second Additional District Judge of 24-Perganas reversing those of the Munsif, Second Court of Basirhat.

2. The suit was one for recovery of possession of a non-transferable occupancy holding on the ground that the original raiyats, defendants Nos. 6 to 8, had transferred the entire jote to defendants Nos. 1 to 5 by a kobala dated the 8th May 1906. The kobala was in favour of the defendant No. 1 alone. The Munsif made a decree in favour of the plaintiff. On appeal, the Additional District Judge has reversed the decree on the ground of limitation. His view was that limitation began to run from the date of the execution of the kobala and as the suit5 was brought more than 12 years after that date it was barred by limitation, on the authority of the cases of Probhati Dasi v. Taibaturinessa Choudhurani 20 Ind. Cas. 664 : 17 C.W.N. 1088 : 19 C.L.J. and Panchkari Chattapadhya v. Maharaj Bahadur Singh 28 Ind. Cas. 708 : 19 C.W.N. 136. It is contended before us on behalf of the plain tiffs that the suit cannot be barred by limitation having regard to the fact that the original raiyats had been continuing payment of rent for the holding to the plaintiffs and as

there had been no abandonment at the date of the kobala the plaintiffs'' cause of action had not arisen. Plaintiffs date their cause of action as from the 25th February 1919 on which date the tenants riled a written statement in a suit for rent by the plaintiffs repudiating their liability to pay rent for the holding. It appears to us that the contention of the plaintiffs that limitation did not run against them until there was an abandonment of the holding by the tenants is correct. In the two cases referred to by learned Judge the raiyat had given up possession to the transferee and had cut off all connection with the holding. Rent was paid by the transferees for the holding but on behalf of the transferors. It was held by the High Court that the landlord was entitled to evict the transferees of the jote as soon as the transfer was completed and the raiyat had ceased to have any connection with the lands and, consequently, limitation ran as against the landlord from the date of such transfer, as the suit must be instituted within 12 years unless the landlord could establish any case u/s 18 of the Limitation Act. Those conditions do not apply to the present case and the suit cannot, therefore, be held to be barred by limitation. That, however, does not end the matter. We have to see whether the decree of the lower Court dismissing the suit should be reversed and plaintiffs should get a decree in ejectment. This, in our opinion, the plaintiffs are not entitled to do. The matter stands thus. The tenants were raiyats and although they had executed the kobala, in favour of defendant No. 1 they have not severed their connection with the holding. There has been no abandonment in fact and they are in possession although as sublessees of their transferees. The cases are all one way that under such circumstances the landlord would not be entitled to eject the raiyat. But it is contended that there is something more in this case and that is the repudiation of the liability to pay rent on the 25th February 1919 and it is urged that that gives the landlord the right to eject the defendants. The first question must, therefore, be enquired into whether repudiation of the tenancy gives the landlord the right to eject his raiyats. Under the Bengal Tenancy Act, it is well established that denial of the right of the landlord or repudiation of the tenancy not followed by a decree of a Court dismissing the landlord''s suit for rent does not work a forfeiture, and the landlord cannot eject the raiyat simply upon the ground that he has repudiated the relationship of landlord and tenant. In the present case, the landlords withdrew from the suit which they had brought for rent on the filing of the written statement by the raiyats. The case was not proceeded with and no decision of the Court was obtained whether the landlords were entitled to recover rent from these tenants notwithstanding their repudiation simply because they had executed a kobala in favour of a third party and purported to have taken a sub-lease from such transferees. Reliance has been placed on behalf of the appellants on, the case of Rajani Kanta Biswas v. Ekkouri Das 34 C. 689 : 11 C.W.N. 811 : 7 C.L.J. 78. That case is, however, quite different from the present one. In that case, the landlords had evicted their raiyats and were in possession not on the allegation that their raiyati interest subsisted but on a different right alleging that they had transferred their holding to a third person and had taken a sublease from him and wanted to enforce their, right as sub-lessees as against the landlords. The Court negatived the right of the plaintiff a and held that as such sub-tenants they were not entitled to recover possession. The case of Kali Charan Ghosh v. Arman Bibi 4 Ind. Cas. 473 : 13 C.W.N. 220 : 5 M.L.T. 276

is in point. But that appears to be a solitary case in which it has been held that the repudiation by the raiyat of the relationship of landlord and tenant gave the landlord a right to eject him even if the tenant was on the land as a sub-lessee of his transferee. This view, it appears to me, cannot be supported in view of the fact that under the Bengal Tenancy Act repudiation of relationship of landlord and tenant or denial of the landlord''s right does not work a forfeiture. The cases to the contrary are numerous and they will be found collected in Mr. Sen''s well-known book on the Bengal Tenancy Act at pages 156 and 157 of the 4th Edition. The, true principle seems, to be that the plaintiffs are not entitled to eject the raiyat defendants, that is to say defendants Nos. 6 to 8, from the holding but they might in a proper suit brought for the purpose be entitled to a declaration that the transferee''s from the raiyats have acquired no interest as against them. This is in accordance with what was laid down in the case of Rammesh Chandra Mitra v. Daiba Charan Das 78 Ind. Cas. 497 : 28 C.W.N. 602 : 39 C.L.J. 356 : (1924) A.L.R. (C.) 900.

3. No one has appeared on behalf of the respondents but the learned Advocate for the appellants placed all the cases bearing on the point he fore us.

4. In the result the appeal must be dismissed.

Greaves, J.

5. I agree.