

(1924) 07 CAL CK 0046**Calcutta High Court****Case No:** None

Prasanna Kumar De Mahajan

APPELLANT

Vs

Nanigopal De

RESPONDENT

Date of Decision: July 10, 1924**Citation:** AIR 1925 Cal 1175 : 90 Ind. Cas. 561**Judgement**

1. This is an appeal by the defendant against a decision of the Additional Subordinate Judge of Chittagong reversing a decision of the Munsif. The suit of which this appeal arises was a suit for rent. The plaintiffs claim was that Defendant No. 18 was the proprietor of a certain taluk and that Defendant No. 18 had leased this out in sadar patni right to the plaintiff in March 1915 and that at the same time four years" arrears of rent from 1911 do 1915 had been assigned by defendant No. 18 to the plaintiff. The plaintiff further claimed that the defendants other than Defendant No. 18 were tenants under him and claimed rent at the rate of Rs. 17 as. 8 a year. The case for the defendants, other than Defendant No. 18, was that they were neither the tenants under Defendant No. 18 nor under the plaintiff and, they asserted that neither of these persons had any title to any of the land. They say that their landlord was some other person named Raj Chandra Sen and that they had been paying rent to him all along. The first Court dismissed the suits but, the Subordinate Judge held that the provisions of Section 78 of the Land Registration Act (Act VII of 1876) were no bar to the claim by the lessor.

2. Four points have been urged before us on behalf of the appellant. First, it is said that Section 78 of the Land "Registration Act is a bar to the claim. Secondly, it is said that the learned Subordinate Judge has relied for his decision upon the admissions of certain co-tenants of the defendants which, it is said, are not evidence against them. Thirdly, it is said that Defendants 3 and 15 have died, and that no substitution has been effected and that without the substitution the suit cannot lie. Fourthly, it is said that the learned Subordinate Judge must be deemed to have accepted, the entry in the khatian and that that being so, he should have dismissed the suit.

3. As to the first point there are decisions of this Court that Section 78 is no bar to a person in the position of the present plaintiff recovering rent, although the person who should have been registered as the proprietor and through whom he claims has not; been registered. One of the rents which are claimed in the suit was cleared by virtue of the assignment, and it is suggested that, so far as this rent is concerned, Section 78 is a bar. This Court, however, has otherwise decided *Sea Sued Serapat Hossein v. Tarini Prosad Dobey* [1906] 11 C.W.N. 141. In the circumstances, we think that there is no substance in the first point.

4. So far as the second point is concerned, it appears that there was evidence on the record apart from the admissions upon which the learned Judge is said to have relied, for it appears that the plaintiff examined the landlord's gomasta, and that he deposed to the realization of rent of the taluk from the defendants and proved the counterfoils showing such realization. It therefore appears that the learned Judge rolled on other evidence than the mere admissions of the co-tenants.

5. So far as the third point is concerned this was not taken in the Courts below and we do not think that it is open to the appellant hero,

6. As regard the fourth point, we think that it was open to the learned Subordinate Judge as he did, to accept a part of the entry in the khatian and not to accept the rest of the entry. There is, accordingly, nothing in this point.

7. In the result, the appeal fails and must be dismissed.

8. The Deputy Registrar's costs, as representing the minor-respondents, have already been paid.