

(1920) 08 CAL CK 0040**Calcutta High Court****Case No:** None

Shashi Bhusan Moral

APPELLANT

Vs

Deb Nath Moral and Others

RESPONDENT

Date of Decision: Aug. 4, 1920**Citation:** 60 Ind. Cas. 705**Hon'ble Judges:** Newbould, J; Abdul Majid, J**Bench:** Division Bench**Judgement**

1. This appeal arises out of what was originally a suit in ejectment. One Bhagaban Sardar had an occupancy holding of 45 bighas which he mortgaged to This plaintiff in 1318. The plaintiff sued on this mortgage, obtained a decree and in execution of that decree purchased that holding in 1916 and subsequently took symbolical possession. The defendant No. 4, who is the sole contesting defendant, admittedly was put in possession of the land by the plaintiff's mortgagor in the year before the mortgage was executed. On these findings the first Court gave the plaintiff a decree declaring his title to the land but refusing khat possession as the tenancy of defendant No. 4, having been created prior to the mortgage, the plaintiff obtained Bhagaban's interest subject to that tenancy, On appeal, the learned Subordinate Judge has dismissed the suit on the finding that no consideration passed for the mortgage.

2. We are unable to uphold this decision. Though the defendant No. 4 set up the title in himself alleging abandonment by the heirs of Bhagaban Sardar and re-settlement with himself by the landlords, that he has failed to prove. So his only right to remain on the land can be by virtue of his lease from Bhagaban. As the mortgagor's lessee he cannot question the validity of the mortgage. The appellant in this case is content with the decree as passed by the Court of first instance and does not press his claim in ejectment.

3. The result will be, therefore, that this appeal is decreed, the judgment and decree of the lower Appellate Court are set aside and those of the Munsif restored.

4. The appellant will get his costs in this and in the lower Appellate Court.