Sheikh Mozaffar Ali and Others Vs Darogha Gope and Another

Court: Calcutta High Court

Date of Decision: Dec. 15, 1910

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 107

Citation: 9 Ind. Cas. 19

Hon'ble Judges: Chatterjee, J; Caspersz, J

Bench: Division Bench

Judgement

1. The substantial point for our determination in this appeal is whether, on the facts of the case, the proposition laid down in Sujjad Ahamed

Chowdhury v. Ganga Charan Ghose 9 C.W.N. 460 : 1 C.L.J. 116 is or is not applicable.

2. The plaintiffs appellants alleged that the principal defendant, whom they sought to eject from the land in suit, was their bataidar for three years, in

or about the year 1900 but that the defendant having given up the land which had been settled with him in darjote, the plaintiffs came into

possession. The plaintiff further stated that, in spite of this, the principal defendant secured an order, u/s 107, Criminal Procedure Code, in the year

1906, declaring his possession as darjotedar. The defendant raised another sort of defence, but he admitted some intermediary title of the plaintiffs

in that he said that he paid rent (Rs. 15) to the zamindars through plaintiff No. 1. His story that the jote had been held furzi (benami) by the plaintiff

No. 1, though it really belonged to the defendant''s father, has been disbelieved by both the Courts.

3. In this state of the pleadings, and on the judgment of the first Court, it was argued in the lower appellate Court that the defendant had been

holding as an under-raiyat under the plaintiff for at least 9 years. The Subordinate Judge went into this question, and has found it established, by the

evidence on the record, that the defendant had been holding the entire disputed land, under the plaintiffs, as an under-raiyat, since at least 8 or 9

years, and, as such, is in continuous possession of the same by paying rent to the plaintiffs either in money or in kind. In that view, he held that the

plaintiffs could not get khas possession of the disputed land without determining the sub-tenancy of defendant No. 1, as under-raiyat, by service of

notice to quit as required by law.

4. In second appeal, the learned Vakil for the plaintiffs has argued, substantially, that the decision has gone against his clients on a new case

inconsistent with the pleadings, and that no notice to quit was necessary. Now the general proposition, which cannot be denied, is that an under-

raiyat is entitled to notice to quit [see Section 49(b) Bengal Tenancy Act]. The case already alluded to in Sujjad Ahmad Chowdhury v. Ganga

Charan Ghose 9 C.W.N. 460 : 1 C.L.J. 116 was a case where the plaintiff had sought to eject the defendant as having obtained a temporary ijara

settlement from the previous zemindar, the term of the ijara having expired; the defendant, however, set up a putni lease from the former zemindar.

The Subordinate Judge had found that, "the defendant was a party to a gigantic fraud in setting up that he was the putnidar" The District Judge

took the same view, and held that the defendant had not proved his putni title, but he treated him as a tenant holding over. It was pointed out in the

judgment of this Court that the case which the District Judge finally made for the defendants was never the defendant"s case, though, no doubt,

there was an issue as to notice, which, having regard to the real case of both parties, appeared to be rather out of place. The ratio decidendi

adopted by the learned Judges of this Court was this, that the defendant was no sort of tenant. In the previously decided cases, the decision went

on the question whether some sort of tenancy was admitted between the parties. If neither party admits or sets up a tenancy, then, obviously,

notice to quit would not be required. The case of Sujjad Ahmad Chowdhary v. Gangacharan Ghose 9 C.W.N. 460 : 1 C.L.J. 116 as we have

already said, involved a consideration of the right of an ijaradar who claimed a putni interest. The defendant in the present action has been found to

be a tenant. He was acknowledged to be a darjotedar, and, on the finding arrived at, it appears that he never ceased to occupy that position. If the

question were one of evicting an ijaradar, it might be pointed out that no notice to quit is required, under the Bengal Tenancy Act, to eject a person

who is described by Section 22 of the Rent Law as a mere farmer of rents. The defendant, having been found to be an under-raiyaT, has been

rightly held entitled to be served with notice to quit. In the circumstances of this case, and on the pleadings, there is a strong indication that the

parties, from the first, accepted a relationship, the legal meaning of which cannot be otherwise than that the defendant was a tenant entitled to

notice before the plaintiffs could succeed in an action of ejectment.

5. We think, therefore, that the decision of the Subordinate Judge is correct and this appeal must be dismissed with costs.