(1910) 11 CAL CK 0006

Calcutta High Court

Case No: None

Raimala Biprajugi		APPELLANT
	Vs	
Shiba Sundari Chowdhuri		RESPONDENT

Date of Decision: Nov. 30, 1910

Citation: 16 Ind. Cas. 351

Hon'ble Judges: Mookerji, J; Coxe, J

Bench: Division Bench

Judgement

1. This is an appeal on behalf of the defendants in an action in ejectment. The plain tiffs-respondents commenced this action on the ground that the first defendant was a tenant-at-will and that his tenancy had been terminated by a valid notice to quit. The suit was resisted by the original tenant as also by the third and fourth defendants, who were respectively the mortgagee and purchaser from her. Their defence in'' substance was two-fold, namely, first, that the first defendant had acquired a right of occupancy in the land which had been let out to her for agricultural purposes; and secondly, that the notice to quit was not valid in law. The Courts below have decreed the suit and made a decree for ejectment against all the defendants. In support of the appeal, two grounds have been urged; namely, first, that the first defendant had a permanant transferable interest in the land, and, secondly, that if her interest was of a temporary nature, it had not been terminated by a legal notice to quit. In our opinion, there is no substance in either of these contentions.

2. In so far as the first point is concerned, the learned Vakil for the appellant has argued that as the land was let out for dwelling purposes, as the rent had not been enhanced for 24 years and as the tenant had been allowed to plant fruit trees on a part of the disputed holding, the inference was legitimate that the tenancy in its inception was intended to be of a permanent nature. We are unable to give effect to this contention. It is not shown that the tenancy has ever been transferred or that any transfer has been recognised by the land-lords; nor has it been shown that

there has been succession from father to son. Besides, the period of time during which the defendant has been in occupation of the land is only 24 years. The origin of the tenancy is known, and there is nothing to show that the tenancy was intended to be a permanent one. Indeed, the case for the defendants in the Courts below was, not that the tenancy was of a permanent nature but that it was of an agricultural character and, consequently, was not determinable as the tenant had acquired a right of occupancy. This defence has failed; nor is it proved that improvements have been effected, or transfers recognized, or possession held for many years at a uniform rate of rent, so as to bring the case within the principle recognized in Robert Watson and Co. v. Raiha Aath Singh 1 C.L.J. 572; Upendra Krishna Mandal v. Ismail Khan 32 C. 41 : 8 C.W.N. 889 : 31 I.A. 144; Nilratan Mandal v. Ismai Khan 32 C. 51 : 8 C.W.N. 895 : 31 I.A. 149 and Nabakumari Debt v. Beharilal Sen 34 C. 902 : 2 M.L.T. 433 : 6 C.L.J. 122 : 34 I.A. 160 : 11 C.W.N. 865 : 4 A.L.J. 570 : 17 M.L.J. 397 : 9 Bom. L.R. 846. We ares, therefore, unable to hold that the tenancy was transferable. The first contention cannot consequently be supported.

3. In so far as the second ground is concerned, it was found by the Court of first instance that the tenancy was created in the beginning of the year 1239; that finding has not been disturbed by the Court of appeal below. The learned Munsif expressly observed that the rent-receipt granted by the landlords at the end of the first year of the tenancy shows that the tenancy must have commenced on the 13th April 1882. The notice, which was served upon the defendants on the 24th August 1905, called upon them to quit the land on the 14th April 1906. Consequently, they had seven months'' notice, terminating with a year of the tenancy. This was obviously a reasonable notice within the meaning of the rule recognized in Pratap Narain v. Maigh Lull Singh 36 C. 927 : 13 C.W.N. 949 : 2 Ind. Cas. 656. It follows, consequently, that not only was the interest of the tentant terminable, but that it had been terminated by a valid notice.

4. The result is that the decree made by the Court below is affirmed and this appeal dismissed with costs.