Mohamed Golam Rabbani Chowdhury and Another Vs Taranath Deb

Court: Calcutta High Court

Date of Decision: Dec. 4, 1924

Citation: AIR 1925 Cal 1212 : 87 Ind. Cas. 657

Hon'ble Judges: Greaves, J; Chakravarti, J

Bench: Full Bench

Judgement

Chakravarti, J.
This is an appeal by the defendants and arises out of a suit brought by the plaintiff for a declaration of his title to four

parcels of land and also for recovery of possession against all the defendants. But so far as Defendant No. 1 was concerned the plaintiff''s case

was that that defendant was his tenant but in a suit for rent brought by the plaintiff against the defendant he (the defendant) put in a written

statement denying the plaintiff''s title to the land and set up a title of Defendants Nos. 2 and 3 as the owners of the land. The plaintiff alleges that on

such a denial having been made he withdrew the rent suit and now brought this suit for khas possession against the defendant on the ground that

the Defendant No. 1 had forfeited his tenancy under the plaintiff. The defence was that the and belonged to Defendants Nos. 2 and 3 and that if it

was found that the plaintiff was the owner of the land then Defendant No. 1 was ready to pay rent to him. The Court of first instance gave a decree

to the plaintiff for possession against all the defendants. That decree was affirmed on appeal by the District Judge. This second appeal is on behalf

of Defendants Nos. 1 and 2. So far as Defendant No. 2 is concerned, we think that the decree against him should be confirmed. So far as

Defendant No. 1 is concerned the learned vakil, who appeared for him urged in this second appeal, that upon the facts found by the learned

District Judge no case of forfeiture of Defendant No. 1''s tenancy has been made out. He further argued that She statement upon which, the

plaintiff''s case of forfeiture was based was not proved in the case. The judgments of both Courts show that those Courts found a denial by the

defendants upon the evidence other than the statement itself. Upon this ground it was contended that that decree so far as it allows the plaintiff''s

khas possession as against Defendant No. 1 was not correct. We think that this contention is right. It appears to us that in this case there was an

issue as to whether or not the plaintiff was entitled to get khas possession against the defendant. That issue raises the question of the plaintiff''s right

to get khas possession based on forfeiture incurred by the tenant, Defendant No.. 1, by the denial of the plaintiff''s title. We do not know upon the

facts found whether the defendant was really, inducted on the land by the plaintiff or not. It is only in case of a tenant being inducted on the land by

a landlord that the tenant cannot deny the title of his landlord at the inception of his tenancy. In cases where the plaintiff becomes the landlord by a

derivative title it has been held that the tenant may without incurring any forfeiture to his landlord put him to the proof of his title. In these cases it is

a clear duty of the plaintiff to allege frets, which would establish that the tenant had incurred forfeiture of his tenancy by denial of his landlord''s title.

Then again so far as I know the law was laid down by Sir Richard Garth in the case of Ahullya Debya v. Bhairab Chandra Patra (1876) 25 W.R.

147. Sir Richard Garth in the course of that decision observes as follows: The plaintiffs sue to recover khas possession of certain land on the

ground that the defendant, who is the tenant occupying that land under the plaintiffs, has forfeited her tenancy by denying the plaintiffs'' title in a

former suit which they brought against her for arrears of rent. She is alleged to have done this in the written statement which she made in that suit.

In order, therefore, to prove this allegation In this suit, it was absolutely necessary for the plaintiffs to show what the statement of the defendant

actually was; and this could only be done by proving the statement itself. It was not enough for the plaintiffs to bring forward merely the judgment

of the Court in the former suit. It was necessary to prove the defendant''s actual statement in order that the Court might Judge, what the defendant

really meant to say, and whether what she said amounted to a forfeiture. There was no difficulty in proving this statement, and the issues which

were raised in the case by the Munsif obliged the plaintiffs to do so, because one of those issues was, ''whether the defendant''s tenancy will prevail

against the plaintiffs, and whether the latter are entitled to khas possession.'' Now the question whether the latter, that is, whether the plaintiffs,

were entitled to khas possession, depended entirely on his alleged forfeiture.

2. Applying the principles laid down in that case it appears to us that the plaintiff did not lay down the foundation of his case so far as khas

possession was concerned. In this case the denial is said to have been made in a written statements. The plaintiff was bound to put that statement in

evidence so that the Court might determine upon the words themselves as contained in that written statement whether the forfeiture was incurred or

not. Then if such a abatement is contained in a written document the primary evidence is the document itself which should be placed before the

Court. This was not done in the present case. The mere statement of the opinion of the plaintiff himself upon certain words used by the defendant

that the forfeiture bad been incurred is no evidence at all. The learned vakil for the respondent has contended that the defendant did not deny that

he had repudiated his tenancy under the plaintiff. For the reasons which I have indicated this is immaterial. It was the duty of the plaintiff to establish

his case. We think that there was no evidence properly so called of the denial by the defendant. The decree as based upon that ground cannot be

sustained. The learned vakil for the respondent presses upon us for a remand with a view to enable him to prove the defendant''s statement. In this

matter also I am supported by the authority of Sir Richard Garth, when under similar circumstances he refused to adopt that course. It is not

necessary to point out that Courts of Equity do not usually lean towards giving relief on the ground of forfeiture. It only operates when the facts are

clearly established that the forfeiture has been incurred and we do not think that the plaintiff should have an opportunity again to establish his case.

On the ground the decree so far as khas possession against, Defendant No. 1 is concerned should be varied. In other respects the decree will

stand.

3. The appeal of Defendant No, 2 fails and is dismissed with costs. The order as to costs by the lower Courts will stand.

4. It should be declared that the plaintiff will be entitled to receive rent from Defendant No. 1.

Greaves, J.

5. I agree.