

(1922) 01 CAL CK 0029

Calcutta High Court

Case No: None

Narendra Chandra
Lahiry

APPELLANT

Vs

Hon"ble Maharaja Sir
Manindra Chandra
Nandi, Bahadur,
K.C.I.E.

RESPONDENT

Date of Decision: Jan. 27, 1922

Acts Referred:

- Transfer of Property Act, 1882 - Section 108(6)

Citation: 67 Ind. Cas. 800

Hon'ble Judges: Pearson, J; N.R. Chatterjea, J

Bench: Division Bench

Judgement

1. This appeal arises out of a suit for rent. It appears that the plaintiff purchased a jote of 244 bighas 18 cottas 14 chitaks at a sale for arrears of rent, but found, that 225 bighas was in the possession of the defendant and the rest in the possession of one Helaluddin and others. He thereupon brought a suit for declaration of his title to and khas possession of the 225 and odd bighas in the possession of the defendant against him. The suit was compromised, and under the compromise the defendant took a lease of the entire land 244 bighas 18 cottas 11 chittaks at a rent of Rs. 200 from the plaintiff from the year 1321 R.S. It was stated in the solenama that the defendant would pay mesne profits for the 225 bighas of land which were in his possession for the years 1317 to 1320 at the rate of Rs. 184 per year, that being the proportionate rent payable in respect of the lands which were in his possession. A decree was accordingly passed upon the solenama. It is found that the defendant did not obtain possession of the 19 and odd bighas of land which were in the possession of Helaluddin. The Courts below held that the entire rent should not be suspended and gave the plaintiff a decree for proportionate rent in

respect of the 225 bighas in the possession of the defendant, and disallowed the rent for the 19 bighas and odd which were not on his possession.

2. The defendant has appealed to this Court, and it is contended that the plaintiff having failed to deliver possession of the 19 and odd bighas of land, there should be suspension of the entire rent.

3. There is no doubt that where the lessor has evicted the lessee from a part of the land demised the entire rent is suspended [see the cases on the point collected in *Saroda Prasad Bhattacharjee v. Rai Manmotho Nath Mitter Bahadur* 28 Ind. Cas. 371 : 19 C.W.N. 870.]. In the present case, however, there is no question of any eviction by the lessor or by anyone claiming under him or by his procurement. The question is whether the plaintiff not having delivered possession of the 19 bighas of land which was in the wrongful possession of a third party, the entire rent should be suspended. That question was not directly decided in any of the cases cited before us. In the cases of *Hurish Chunder Koondoo v. Mohinee Mohun Mitter* 9 W.R. 582, and *Bullan v. Lalit Jha* 3 B.L.R. (App.) 119. (8)58 Ind. Cas. 186 the tenant did not obtain possession of the demised land at all, and it was held that he was not liable to pay rent. In *Narainsawmy Naidu Garu v. Yerramali Ram krishnaya* 6 Ind. Cas. 479 : 33 M. 499; 7 M.L.T. 119 : (1910) M.W.N. 221 and 280, it was held that where the lessor does not put the lessee in possession but there is no obstruction or likelihood of obstruction to the lessee taking possession of the same, and he neither tries nor requests the lessor to put him in possession, the lessee is bound to pay rent. In that case the learned Judge (sitting singly) observed: "But if the land is already in possession of a third person to the knowledge both of the lessor and the lessee, I should be inclined to hold that it would be the duty of the lessor to make it possible for the lessee to take possession by removing the third person from the possession thereof, even though no express request for the purpose is made by the lessee." The lessee in that case appears not to have obtained possession of the land demised at all, and the observations were obiter. In *Annada Prasad Mukhopadhyaya v. Mathura Lal Nag Mazumdar* 2 Ind. Cas. 123 : 13 C.W.N. 702 : 9 C.L.J. the lessee was prevented from taking possession of a proportion of the demised land by another lessee to whom the said portion was demised by a subsequent lease. One of the Judges, Chitty, J., was of opinion that there was no eviction properly so called of the lessee by the landlord, while Vincent, J., was of opinion that there was eviction of the first lessee by the record by the procurement of the landlord. The land in that case was in the Sunderbans; there was a dispute as to the boundaries of the lands let out to the two lessees respectively, and the landlord was found not to have acted mala fide. The lessee (under the first lease) so far from repudiating the lease kept possession of the remaining portion and even paid rent subsequently to the creation of the second lease, and it was held by both the learned Judges that the lessee could not ask for a suspension of the whole rent and was bound to pay proportionate rent. Chitty, J., in that case observed: "It may be questioned how far the technicalities to be found in the English Law should be allowed to affect the

relations of landlord and tenant in this country. In one respect the principle underlying the English decisions appears to be inapplicable to this present case. Eviction is regarded as a wrong done by the landlord to this tenant, for which the former is to be penalised. Here not only, as I have said, was there no eviction properly so called, but there is no proof of mala fides on the landlord's part. It may be that by a careless statement of boundaries in the two pottas lands which should be included in the defendant's holding are also included in those of Rasik Lal Dutta. But that is all that can be alleged against the plaintiff on the facts of this case as admitted and as found by the lower Appellate Court. I think that the defendant has no defence to the plaintiff's suit for rent."

4. In the case of *Manindra Chandra Nandi v. Narendra Chandra Lahiri* 52 Ind. Cas.18 : 23 C.W.N. 585 : 46 C. 956 (which was between the same parties as in the present case) Fletcher, J., appears to have taken a different view. He pointed out that the case of *Stokes v. Cooper* (1814) 3 Camp. 514n : 14 R.R. 829n. relied upon by Chitty, J., had been disapproved of in *Smith v. Raleigh* (1814) 3 Cam 513 : 14 Rule 11 and 829 and also in another case [*Reeve v. Bird* (1834) 1 C.M.R. 31 at p 36 : 4 Tyr. 612 : 3 L.J. EX. 282 : 149 E.R. 980] and that in England there is no difference between the case where the landlord has ousted the tenant from a portion of the holding and the case where the landlord has let out the property to the lessee having already put an earlier and prior lessee in possession of it, and referred to the case of *Neale v. Mackenzie* (1836) 1 M. & W. 747 : 2 Gal 174 : 6 L.J. Ex. 263 : 150 E.R. 635 : 46 R.R. 478.

5. Those cases, however, are distinguishable from the present, as the lessee in those cases could not obtain possession, nor could the lessor deliver possession by reason of the lessor having granted a lease in favour of a third person in respect of a portion of the land demised to the lessee in question. The defendant in the present case pleaded that the plaintiff was in possession of the 19 bighas by letting out the same to Helaluddin. That case has not been accepted by the Courts below. The learned Vakil for the appellant, however, referred to a passage in Halsbury's Laws of England, Volume XVIII, page 485 where it is stated: "where part of the premises is held by a third person rightfully claiming under a title adverse to the lessor, so that the lessee cannot obtain possession, the result is the same as in the case of unlawful eviction by the lessor, and no part of the rent is recoverable." [*Holgate v. Kay* (1844) 1 Car. & Kir. 341 : 70 R.R. 800]. Reference was also made to Section 108(6) of the Transfer of Property Act which provides that, in the absence of a contract to the Contrary, the lessor is bound on the lessee's request to put him in possession of the property. It is pointed out that the defendant in the written statement stated that he had requested the plaintiff to put him in possession of the land. The question, however, does not appear to have gone into in either of the Courts below.

6. It is unnecessary in the present case to consider the broad question whether, ordinarily, the entire rent should be suspended when the lessor is unable to deliver possession of a portion of the land demised whatever might be the reason for his

inability and whether the view taken by Chitty, J., in the case of Annada Prasad Mukhopadhyaya v. Mathura Lal Nag Mazumdar 2 Ind. Cas. 123 : 13 C.W.N. 702 : 9 C.L.J. that the English rule should not be applied to this country is correct.

7. The present case is not an ordinary case of settlement, where the lessor has to deliver possession of the land demised to the lessee. The defendant was already in possession (though wrongful) of 225 bighas for several years and, as stated above, 19 bighas of land was at the date of the solenama, in the possession of Helaluddin. The solenama was executed on the 30th May, 1914 corresponding to the 16th Jaistha 1321 but the tenancy in respect of 244 bighas was to be operative retrospectively from the beginning of 1321 i.e., 1st Baisakh 1321. The defendant took a settlement of the entire 244 bighas though he was perfectly aware that a portion of it, viz., 19 bighas, was in the wrongful possession of a third party. These indicate an intention that the liability of the defendant to pay rent in respect of the 225 bighas which was in his possession already did not depend upon the delivery of possession of the 19 bigha which was in the possession of Helaluddin. The plaintiff never put any obstruction in the way of defendants recovering possession, and there is no question of mala fides on the part of the plaintiff. We think that, in the circumstances of the case, the Courts below were right in holding that the entire rent should not be suspended, and that the defendant is liable to pay proportionate rent in respect of the 225 bighas of land in his possession;

8. The appeal is accordingly dismissed. Each party to bear his own costs.