AIR 1926 Cal 1206 : 96 Ind. Cas. 360

Calcutta High Court

Case No: None

Jagannath Mondal		APPELLANT
	Vs	
Bhajahari Nath and Another		RESPONDENT

Date of Decision: Dec. 10, 1925

Citation: AIR 1926 Cal 1206 : 96 Ind. Cas. 360

Hon'ble Judges: Cuming, J; B.B. Ghose, J

Bench: Division Bench

Judgement

Cuming, J.
In the suit out of which this appeal has arisen the plaintiffs sued to eject the defendant on the following allegations. Their case was that the defendant was their under-raiyat holding some 11 bighas of land tinder thorn at a rental of Rs. 13 per year. Notices had been duly served u/s 49 of the Bengal Tenancy Act but the defendant had not quitted the land and hence the suit. The defendant''s case was that he was a raiyat with the right of occupancy and he farther contended that his nephews being his co-sharers were necessary parties to the suit.

2. The Court of first instance held that the case must fail owing to defect of parties, being of the opinion that the nephews of the defendant were necessary parties and he further held that the defendant being an occupancy raiyat was not liable to be evicted. In appeal these findings were reversed. The lower Appellate Court held that the respondent was an under-raiyat, and he further held that the nephews of the respondent were not necessary parties. Hence he decreed the appeal and decreed the whole suit with costs.

3. The defendant has appealed to this Court. His first point is that certain recitals in the kobala by which the predecessor of the appellant purchased the holding are not evidence against him. It would appear that the learned Judge used this kobala for the purpose of determining the status of the appellant. He relied on the statement in the kobala that what the appellant''s predecessor purchased was the land and the crops and from this

statement that the crops were also purchased drew the inference which was a perfectly legitimate one that the appellant''s predecessor''s vendor was a cultivating raiyat. The statement in the kobala merely shows what was purchased by the appellant''s predecessor and, therefore, can be used as evidence against the appellant and the learned Judge was entitled to draw the inference he did.

4. The next point argued is that the suit was bad for non-joinder of the nephews of the appellants. It appears that Chhaku, the father of the appellant, left 3 other sons and these sons are since dead leaving certain heirs. This contention has no substance whatever. The holding has been found to be an under raiyati holding and, therefore, not heritable and the heirs of Chhaku had no interest whatever in the holding unless they were recognized by the landlord. In the present case it appears the landlords recognized the defendant as their tenant. It is not suggested that they have ever recognized any of the other sons of Chhaku or their sons as tenants in which case they had no interest whatever in the land, and, therefore, were not necessary parties to the suit.

5. The result must be that the appeal fails and is dismissed with costs.

Ghose, J.

6. I agree.