

(1924) 08 CAL CK 0036

Calcutta High Court

Case No: None

Debenara Lal Panja and Others

APPELLANT

Vs

Nilmoney Prodhan and Others

RESPONDENT

Date of Decision: Aug. 25, 1924

Citation: AIR 1925 Cal 1173

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

Bench: Full Bench

Judgement

Chakravarti, J.

This is an appeal by the plaintiff and arises out of a suit brought by him for recovery of arrears of rent in respect of 5 jamas which are described in the plaint. The first Courts gave a decree and the lower appellate Court has dismissed the suit. The plaintiff's case was that the land in suit appertained to the Babaji Niskary Bahali 1668 B Registered C Register of the Collector of Midnapore; that those lands were sold in execution of a certificate for arrears of road cess, and that he purchased those lands in October 1915 and got his name registered in the Collectorate under the Land Registration Act, and that the defendants held those lands at the rents mentioned by the plaintiff, and that the plaintiff was, therefore, entitled to recover the rent duo from the defendants. The defence of the defendants was that there was no relationship of landlord and tenant between the plaintiff and the defendants, and that one Nakari Meah and his co-sharers were really the landlords of the defendants to whom the defendants had paid the rent due and that accordingly the plaintiff was not entitled to recover the rent sued for. It appears that the baha-lis were measured at the time of the thak-bush survey and that the plaintiff asked for a local investigation and that a Commissioner was appointed who had in this case found and reported that Chawks Nos. 16 and 17 of the thak-bust map covered the lands in suit. The Munsif accepted that finding of the Commissioner and held that the plaintiff as a purchaser of this property acquired the title, and as he was registered under the Land Registration Act, the defendants, u/s 60 of the Bengal Tenancy Act, wore estopped from pleading that the rant was not due to the

plaintiff. Section 60 is quite clear and it appears that in the case of Hem Chunder Misri v. Rajah Sir Sourindra Mohan Tagore [1901] 5 C.W.N. 482, and in the case of Sadhu Charan Pal v. Radhika Mohan Roy [1904] 8 C.W.N. 695, it has been clearly laid down that when a person has been registered as an owner of certain land under the Land Registration Act the tenant holding that land is precluded under the provisions of Section 60 of the Bengal Tenancy Act from pleading that the registered owner is not the true owner. It also appears from Section 78 of the Land Registration Act VIII of 1876 (B. C.) that a tenant is not bound to pay rent to a person, whose name has not been registered under that Act. Taking the two sections together it appears that those two sections are complementary to each other. Section 78 provides that a tenant is not bound to pay rent to a person who is not registered and Section 60 of the Bengal Tenancy Act provides that he is bound to pay to the person so registered. The learned District Judge, in reversing the judgment of the Munsif, recorded a judgment from which it is difficult to understand what he really intends to find. But it is quite clear that the finding that (he lands do appertain to the property purchased by the plaintiff is not set aside. On the contrary the learned District Judge based the argument, which it is difficult to follow, that even that assumption is nor, of any avail to the plaintiff. The learned District Judge refers to the case of Lodar Mollah v. Kally Dass Roy [1882] 8 Cal. 238 and says that the only relevant questions that arise in a suit for rent are:

(1) Did the defendants ever pay rent to the plaintiff and so acknowledged him as a landlord?

(2) Did they pay rent to the plaintiff's predecessor-in-interest?

(3) Did they pay rent to Nakari Meah and others for the years in suit?

2. It appears to us that the case cited does not limits the question to those indicated by the learned District Judge. In that case Mr. Justice Field clearly points out that in a suit for rent, if the plaintiff claims such a title, and before he can succeed, if his title is challenged by the defendants, he shall have to establish that he is entitled to such a rent. Here the present plaintiff had established by showing that the lands in suit appertained to the property which he had purchased at the auction sale, and the plaintiff has further proved that his name has been registered under the Land Registration Act. These finding; are, in our opinion, not quite enough to entitle the plaintiff to a decree for the rent claimed. In this suit the defendants are not entitled u/s 60 of the Bengal Tenancy Act to pay the rent due for the land in suit to Nakari Mean. If he is bound to pay the rent to the plaintiff he cannot be sued for this rent by Nakari because Section 78 of the Land Registration Act would be a bar to such a suit. Therefore, it appears to us that the defendants are in no way concerned with the question which may arise hereafter between the plaintiff and Nakari. The plaintiff, as a registered owner, would be entitled to recover rent until Nakari establishes his name against the plaintiff. So long as this is not done the tenant, if he has paid his rent for the land, is protected from paying the rent over again to

another person.

3. We, therefore, set aside the judgment and decree of the learned District Judge and restore those of the Munsif with costs in this Court and in the lower appellate Court.

4. This judgment will also govern the other two appeals, Nos. 1172 and 1173.

Greaves, J.

5. I agree.