

(1919) 02 CAL CK 0039

Calcutta High Court

Case No: None

Uma Charan Biswas

APPELLANT

Vs

Nabin Chandra
Mandal

RESPONDENT

Date of Decision: Feb. 19, 1919

Citation: AIR 1919 Cal 95 : 50 Ind. Cas. 319

Hon'ble Judges: Greaves, J

Bench: Single Bench

Judgement

Greaves, J.

This appeal is by the plaintiff against a decision of the Subordinate Judge of Faridpur, dated 19th December 1916, reversing a decision of the Munsif of Bhanga, dated 19th April 1915. The plaintiff's suit was to eject the defendant from the holding in suit. The plaintiff alleged that the defendant was an under raiyat holding under a lease dated 28th Kartik 1299 for a period of nine years expiring in the year 1307 and which was not liable to be renewed. On the expiry of the term the tenant held over upon the terms of the lease until the year 1912, when the plaintiff gave him notice to quit. The suit was commenced on the 21st July 1914. The main allegation of the defendant was that the plaintiff was a tenure-holder and that he was an occupancy raiyat. At the same time he pleaded as an alternative case that if he was not an occupancy raiyat yet he had, by local usage, acquired a right of occupancy. The learned Subordinate Judge holds that the defendant is not liable to ejectment, for that he has really a right of occupancy in the land. He goes on to say: "The lower Court has not come to any finding upon this point, on which it appears that no specific issue was raised...", and he says that in the circumstances he should have remanded the case for a finding on that issue but for the fact that he found a statement in the Record of Rights that the defendant had rights of occupancy and in view of this piece of evidence, which he says is uncontradicted by any evidence adduced on behalf of the plaintiff other than his uncorroborated statement, that the defendant had established that he had rights of occupancy in the land. It is urged

before me that inasmuch as the defendant's case was that he was an occupancy raiyat and that as there was no issue upon the question as to whether, if he was only an under raiyat he had acquired rights to of occupancy, I should remand the case for a finding as to whether the defendant had acquired by local custom or usage any occupancy rights in the land. But unfortunately for the plaintiff, having regard to the entry in the Record of Rights that the defendant had rights of occupancy, the burden of proof was upon him to show that this entry was wrong and to displace the presumption that arises therefrom. This he has failed to do. In the circumstances I think that the Subordinate Judge was right in holding that upon the evidence to be found in the Record of Rights, which is uncontradicted by any evidence of the plaintiff, the defendant had right of occupancy in the land and consequently was not liable to ejectment by virtue of the notice given in the year 1912, I have been referred to a case, *Gopal Mandal v. Topai Sankhari* 45 Ind. Cas. 545 : 22 C.W.N. 618 : 28 C.L.J. 84 : 46 C. 43, which seems to me to be in point in deciding this question; it decides that if you have an entry in the Record of Rights such as we have in this case and the presumption raised from that entry is uncontradicted by any evidence given by the plaintiff who seeks to eject a defendant as being an under raiyat, the Court must and should rely upon that entry in the Record of Rights.

2. For these reasons, I think, the decision of the Subordinate Judge is correct, and this appeal fails and must be dismissed with costs.