

(1922) 03 CAL CK 0033**Calcutta High Court****Case No:** None

Ramani Kanta Roy

APPELLANT

Vs

Hara Chandra Das

RESPONDENT

Date of Decision: March 24, 1922**Citation:** AIR 1923 Cal 162 : 68 Ind. Cas. 495**Hon'ble Judges:** Panton, J; Newbould, J**Bench:** Division Bench**Judgement**

1. This is an appeal against the decree dismissing a suit for rent on the finding that the principal defendant had been dispossessed by the plaintiff landlord from a portion of the holding for which rent is claimed.

2. The facts of the case as found are as follows: The holding was originally held by two brothers, Muniram Singh and n(sic)an Chandra Singh. The principal defendant Hara Chandra Das is the son of Maniram; Jnan Chandra had two sons, Padma Singh and Boul Singh, Boul Singh died leaving a son Baishnab Charan and a daughter Brindamoyee. Baishnab Charan died leaving Brindamoyee, defendant No. 3, surviving. Padma Singh left a widow, Kanchanmoni, who is defendant No. 2. After the death of Baishnab Charan the plaintiff made a settlement of half of the holding with Kanchanmoni and Brindamoyee. It is found by the lower Appellate Court that the principal defendant, Hara Chandra Das, is now entitled to 12 annas share of the property; but the plaintiff settled 8 annas share with the 2nd and 3rd defendants, and this settlement has led to with-holding of the rent by some of the under-tenants who had taken advantage of the situation. He has also found that this act of the landlord, besides interfering with the appellant's enjoyment of his property, has cast a cloud on his title.

3. On behalf of the appellant it is contended that the act of the landlord in affirming the possession of the 2nd and 3rd defendants, who he believed to have inherited the 8 annas of Jnan Chandra, did not amount to dispossession of the plaintiff from the 4 annas share which he inherited on the death of Baishnab Charan. But on the

findings we must hold that there was actual dispossession. The lower Appellate Court has accepted the evidence of dispossession as given by the principal defendant himself: and from this evidence, which we have relied in order to properly understand the judgment, it is clear that it is the defendant's case that he actually took possession of the share inherited from Baishnab Charan after Baishnab Charan's death and before the settlement made with these ladies by the plaintiff. It is also found that the plaintiff's act rendered this defendant unable to realise rent from his under tenants, for it is the defendant's evidence that the under-tenants whose rents he was unable to realize were in occupation of the land which had been in Baishnab Charan's share. On the facts found we hold that the learned District Judge was right in applying the principle that dispossession by the landlord from a portion of the holding causes suspension of rent of the holding and dismissing the suit.

4. We, accordingly, dismiss this appeal with costs.