

Shashi Mohan Sutradhar and Another Vs Bipin Behary Karmokar and Others

Court: Calcutta High Court

Date of Decision: Dec. 22, 1910

Acts Referred: Bengal Tenancy Act, 1885 " Section 87

Citation: 9 Ind. Cas. 20

Hon'ble Judges: Chatterjee, J

Bench: Single Bench

Judgement

Chatterjee, J.

Judgment.--This appeal arises out of an action brought by the plaintiffs for ejecting the defendants from the land in suit on the

allegations that defendants Nos. 1 and 2 had resided upon the said land and enjoyed the fruits of the trees thereon, that they had no transferable

interest in the land, that the said defendants since 1304 had been residing in a different village abandoning the land in suit and ceased to pay rent;

and that the defendant No. 4, who was in possession of the land as transferee of the defendants Nos. 1 and 2, had no right to occupy it.

2. The defence of the defendants Nos. 2 and 4 was to the effect that there was no abandonment and that they never ceased to pay rent.

3. The land is partly horticultural and partly homestead.

4. The Court of first instance found that although the tenant defendants had left the village and had not paid rent since 1307 B.S., there was no

disclaimer of the interest on their part so as to entitle the plaintiff to recover khas possession of the land and accordingly dismissed the suit.

5. On appeal, the learned District Judge has held that the tenant defendants paid no rent for five or six years before the institution of the suit and

that they had no intention of redeeming their mortgage. He further held that in the present case although there was no express abandonment",

abandonment on the part, of the tenant defendants had sufficiently been shown by their conduct. Accordingly he reversed the decree of the Court

of first instance and decreed the plaintiff's suit.

6. In second appeal it is contended on behalf of defendants Nos. 2 and 4 that there was no abandonment as contemplated by Section 87 of the

Bengal Tenancy Act. Section 87 of the Bengal Tenancy Act runs as follows: If a raiyat voluntarily abandons his residence without notice to his

landlord and without arranging for payment of his rent as it falls due and ceases to cultivate his holding either by himself or by some other person,

the landlord" may * ***** enter on the holding." It is argued that as this land is not a culturable land no question of the tenant's ceasing to cultivate

the holding either by himself or by some other person can arise and that the mortgagee was, in fact, holding the land in the same manner as the

tenant defendants had been holding prior to the usufructuary mortgage.

7. I think that the case does not come strictly within the purview of Section 87 of the Bengal Tenancy Act, as the section contemplates cases in

which there is cultivation of the holding by the tenant. In cases where the land is partly homestead and partly horticultural, the question of ceasing to

cultivate the holding does not properly arise. But I think that apart from Section 87 of the Act, the landlord is entitled to khas possession upon the

findings arrived at by the lower appellate Court that the tenant defendants executed a usufructuary mortgage, placed the mortgagee in possession,

and left the village without making any arrangement for the payment of rent.

8. It has been held in several cases [see the cases of Krishna Chandra Datta Chowdhry v. Khiran Bajania 10 C.W.N. 499 : 3 C.L.J. 222; Rasik

Lall Dutt v. Bidhu Mukhi Dasi 10 C.W.N. 719 : 4 C.L.J. 306 : 33 C. 1094 and Rajendra Kishore Adhikari v. Chandra Nath Dutta 10 C.W.N.

878 that when the tenant of a non-transferable holding executes a usufructuary mortgage of it, places the mortgagee in possession, abandons the

holding and leaves the village, the landlord is entitled to treat the mortgagee as a trespasser and to ask for ejectment. It has, however, been

contended on behalf of the appellants that those cases are distinguishable from the facts of the present case. The facts of some of the cases may be

somewhat different from those of the present case. But the principle which underlies these cases is applicable to the present case. As already

stated, in the present case the learned District Judge has found that the tenant defendants had no intention to redeem the mortgage and that they

had abandoned the holding. Under the circumstances, I think, the judgment of the learned District Judge is correct. The appeal is dismissed with

costs.