
(1867) 02 CAL CK 0004

Calcutta High Court

Case No: Regular Appeal No. 137 of 1864 and Special Appeal No. 3130 of 1864

Bishtoo Churn
Bhattacharjee and
Others

APPELLANT

Vs

Gooroodoss Roy

Ramnarain Mitter Vs
Gooroodoss Roy and
Others

RESPONDENT

Date of Decision: Feb. 22, 1867

Judgement

Sir Barnes Peacock, Kt., C.J.

We think that the words "suits to recover the occupancy or possession of any laud," &c., in cl. 6, s. 23 of Act X of 1859, refer only to possessory actions against the person entitled to receive the rent, and not to suits in which the plaintiff sets out his title and seeks to have his right declared, and possession given him in pursuance of that title. Full meaning may, and we think must, be given to the words "illegally ejected," without treating them as giving a wider sense to the words above mentioned. In many instances which may be suggested under this Act, a zamindar having a right to get possession would be guilty of an illegal not if he ejected his ryot otherwise than by means of a decree of a Court. For instance, s. 22 says that, "when an arrear of rent shall be adjudged to be due from any farmer, or other lease-holder, not having a permanent or transferable interest in the land, the lease of such lease-holder shall be liable to be cancelled, and the lease-holder to be ejected." Now, if the lease is liable to be cancelled and the lease-holder to be ejected, the lease-holder would have no title as against the zamindar seeking to cancel the lease. But it is declared that "no such lease shall be cancelled, nor the lease-holder ejected, otherwise than in execution of a decree or order under the provisions of this Act." A zamindar therefore could not of his own authority cancel the lease and eject the ryot forcibly, but must get the lease cancelled by a decree of Court. If, regardless of the law, he, by force or otherwise, turned the ryot out of his field, the ryot might say: "You have ejected me out of my lands without a decree of Court,-- I have therefore been illegally ejected by you, and notwithstanding that you may have the title to eject me according to

law, I have a right to be restored to possession during the pendency of your action." That suit, which would be under cl. 6, s. 23 of Act X, must be brought within one year. But suppose the ryot sues, alleging that he has committed no breach of the conditions of his lease; that, apart from the question of mere possession, the zamindar had no title whatever to eject him; and prays for possession with damages and mesne profits: no such suit is provided for by s. 23, and it is clear, therefore, that the ryot is left to his remedy in the Civil Court in such a case. We think he has that right equally, whether he claims wasilat or not.

2. Looking to the whole Act, it appears to us that cl. 6 of s. 23 does not take from the Civil Court the power to try the question of title as between a ryot, farmer, or tenant, and the person to whom he pays rent. It follows, therefore, that in this action, which is brought setting out a title by the plaintiff, and asking, "under the above facts," to be declared "entitled, on the strength of his documents to recover possession of the lands," he will be entitled, if he makes out his case, to a decree that he be put into possession of the land with mesne profits, and have compensation in damages to cover the expense of demolishing the houses and garden, and filling up the tanks which are said to have been excavated. The case will be returned to Trevor, J.'s Bench.

(1) See Bang. Act VIII of 1869, ss. 27 and 33; see also Chunder Coomar Mundul v. Nunnee Khanun, 11 B.L.R., 434.