

(1868) 06 CAL CK 0024

Calcutta High Court

Case No: Special Appeal No. 1945 of 1867

Jayanarayan Singh

APPELLANT

Vs

Matilal Jha

RESPONDENT

Date of Decision: June 18, 1868

Final Decision: Dismissed

Judgement

Loch, J.

No doubt the Deputy Collector is right in holding that the defendants are not warranted in saying that their lease covers 1280 beegahs 5c. 9d., for the area is expressly limited in the lease to 500 beegahs. The possession of the parties to this suit is as follows: Plaintiff is the putneedar on the part of the zamindar, Dhanpat Singh, and he says the lands for which rent is claimed form part of his putnee. Defendants hold an istemrari tenure for 500 beegahs, not from the plaintiff's lessor or from the plaintiff, but from a third party, Bikram Sirdar, who has a title adverse to, and independent of, the zamindar and the plaintiff; and the defendants have never paid any rent to the plaintiff, or his zamindar, either for the 500 beeghas comprised in their lease, or for the lands in excess, for which rent is now demanded of them, so that it is clear that between plaintiff and defendant no relationship of landlord and tenant has ever existed. Furthermore, we find that the zamindar brought a suit in the Court of the Principal Sudder Ameen to recover possession of 548 beeghas from the defendants, stating that, under cover of their lease of 500 beegahs, the defendants had taken forcible possession of 548 beegahs of land besides. The zamindar treated them in that suit as trespassers holding under a title adverse to him, and he sued to eject them, and was successful in the first Court; but on appeal to the High Court the suit was dismissed, on the ground that the plaintiff, zamindar, had failed to make out his title to these lands.

2. Looking at the facts above stated, it appears to us that the Judge has taken a very proper view of the position of the parties in holding, as he did, that no relationship of landlord and tenant exists between the parties. Nor is it the case of a tenant

holding more lands than is covered by his lease, but the defendants' title is altogether adverse to the plaintiff, whose title to the lands has been declared in the suit brought by the zamindar, whom plaintiff now represents, not to be established. Such being the case, we do not think that the plaintiff can recover rent in the present suit. It should be dismissed, and it is unnecessary to go into the cases quoted by the learned counsel for the appellant. The appeal is dismissed with costs.

¹Grounds on which ryot having right of occupancy is liable to enhanced rent.

The (sic) quantity of (sic) held by the ryot is greater than he has paid rent for.

[Cl. 3, Sec. 17:--No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him except on someone of the following grounds, namely:--

* * *

That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.]