
(1880) 09 CAL CK 0012

Calcutta High Court

Case No: None

Monohur Das

APPELLANT

Vs

Radha Pershad Misser

RESPONDENT

Date of Decision: Sept. 5, 1880

Citation: (1881) ILR (Cal) 317

Hon'ble Judges: Richard Garth, C.J; Mitter, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

We think that, having regard to the rule laid down by the Full Bench in *Emam Momtazooddeen Mahomed v. Rajcoomar Das* 14 B. L. R. 408; s.c. 23 W. R. 187, and to subsequent decisions of this Court, amongst which we may specially notice the cases of *Byjnath Singh v. Goberdhun Lall Mohasohree* (24 W. R. 210) and *Chiet Narain Singh v. Gunga Pershad* (25 W. R. 216), we cannot do otherwise than allow the appeal, and dismiss the plaintiff's suit.

2. It is clear that the covenant entered into by the mortgagor in the mortgage-bond of 1867 did not render invalid the zurpeshgi lease which was subsequently granted. We have held in other cases that such a covenant only creates a personal liability as between the mortgagor and the mortgagee.

3. Then it is also clear, that the subsequent sale under the decree of 1873 did not put an end to the zurpeshgi lease, (sic) affect the interests of the zurpeshgidar.

4. The plaintiff has, therefore, no right to sue for khas possession of the property as against the zurpeshgidar. His only course would be to bring a suit against the zurpeshgidar to have his right declared to sell the property to satisfy his mortgage-debt, so as to give the zurpeshgidar an opportunity of redeeming.

5. This suit is one of a totally different character. The plaintiff has all along contended that he is entitled to khas possession, and that the zurpeshgi lease is

void; and we should be entirely changing the nature of his claim if we were to allow him to frame and try it on the other basis.

6. The judgment of the lower Court must, therefore, be reversed, and the plaintiff's suit dismissed with costs in both Courts.