

(1910) 04 CAL CK 0057

Calcutta High Court

Case No: None

Buddhimanta Pramanik
and Others

APPELLANT

Vs

Sarat Chandra
BanerjeeRESPONDENT

Date of Decision: April 1, 1910**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 155, 89

Citation: 6 Ind. Cas. 147**Hon'ble Judges:** Mookerjee, J; Carnduff, J**Bench:** Division Bench

Judgement

1. This is an appeal on behalf of the first three defendants in an action for ejectment. The father of the fourth defendant took a lease of the disputed lands from the predecessor-in-interest of the plaintiff on the 25th April 1868. It was expressly provided in this lease that the tenant would not be entitled to alienate the property nor to place the land in possession of any body else. The lease further contained a covenant that, if the lessee acted in contravention of this condition, the landlord would be entitled to take possession without re-course to the Court, and the tenant would not be allowed to plead that he had acquired a right of occupancy u/s 6 of Act X of 1859. The case for the plaintiff is that the 4th defendant in contravention of this covenant in the lease alienated the property in favour of the first three defendants and subsequently took a sub-lease of a small portion from them. On this allegation, the the plaintiff sued to eject the defendants.

2. The Court of first instance made a decree for ejectment in favour of the plaintiff against all the defendants. The transferees, the first three defendants, alone appealed to the District Judge, who affirmed the decree of the original Court. They have now appealed to this Court, and on their behalf it has been contended that the suit is not maintainable by reason of the failure of the plaintiff to comply with the provisions of Section 155 of the

Bengal Tenancy Act. It has been argued by the learned Vakil for the appellants that, in spite of the condition in the lease which entitles the landlord on breach of the covenant to re-enter without the assistance of the Court, the landlord is bound by the provisions of Section 89 of the Bengal Tenancy Act. This contention is no doubt well-founded because u/s 178 of the Bengal Tenancy Act nothing in any contract between a landlord and a tenant made before or after the passing of that Act shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of that Act. This, however, is of no assistance to the appellants as they are not tenants. For the same reason, Section 155 of the Bengal Tenancy Act is equally of no avail. Section 155 provides that a suit for the ejectment of a tenant on the ground that he has broken a condition, on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment, shall not be entertained unless the landlord has served in the prescribed manner a notice on the tenant. It is not necessary for us to consider whether Section 155 would have been of any assistance to the 4th defendant if he had relied upon it in the Court of first instance. Possibly it might have been argued on behalf of the plaintiff, in answer to any such contention, that Section 155 was not intended to apply to cases of the present description. But the tenant has not resisted the decree for ejectment. He is quite content with the decree made against him by the Court of first instance. He did not appeal to the District Judge nor has he appealed to this Court. Even if we assume, therefore, that Section 155 is applicable to a tenant in the circumstances of the present case, it is of no avail to the appellants, who are transferees from the lessee and under the terms of the lease, are clearly trespassers and liable to be ejected as such.

3. The result, therefore, is that the decree of the Court below must be affirmed and this appeal dismissed with costs.