

Raghupati Chatterjee Vs. Panchanani Dassi and ors.

Raghupati Chatterjee Vs. Panchanani Dassi and ors.

SooperKanoon Citation : sooperkanoon.com/856769

Court : Kolkata

Decided On : Jun-06-1935

Reported in : AIR1935Cal609,158Ind.Cas.33

Appellant : Raghupati Chatterjee

Respondent : Panchanani Dassi and ors.

Judgement :

R.C. Mitter, J.

1. This appeal is on behalf of the plaintiff in a suit for recovery of arrears of rent for the years 1334 to 1337 B.S. The suit has been dismissed by both the Courts below. Hence the present appeal. It is admitted that the property originally belonged to one Nrisingha Pada Saha. Two rival claimants came upon the field as being purchasers of the interest of Nrisingha Pada Saha, namely Nrisingha Hari Das and the present plaintiff Raghupati Chatterjee. The defendants were tenants on the land. In the year 1913 Raghupati instituted a suit for rent against them. That suit was decreed by consent. The result of this decree was to establish firmly the relationship of landlord and tenant between Raghupati and the defendants. Accordingly Raghupati the appellant before me would ordinarily be entitled to recover rent from the defendants in respect of the suit land. Other circumstances however intervened. The very next year on 2nd January 1914, Nrisingha Hari Das instituted a suit against Nrisingha Pada Saha and Raghupati Chatterjee. In that suit

he prayed for a declaration of his title to and possession of the properties in suit. Apparently the position taken by him was that his purchase prevailed upon the purchase by the plaintiff of the right, title and interest of the original owner Nrisingha Pada Saha.

2. Shortly after the institution of the said suit Nrisingha Hari Das and the present defendant 1 sued for rent. The present contesting defendant 1 without waiting for the result of the title suit of Nrisingha Hari Das, allowed a decree to be passed against her and in favour of Nrisingha Hari Das by consent on 7th August 1914. Since then she has been paying rent to Nrisingha Hari Das. The title suit of Nrisingha Hari Das against Raghupati Chatterjee was however finally dismissed in 1922. The judgment of this Court is reported in Baghupati Chatterjee v. Nrisingha Hori Das, 1923 Cal 90. The question therefore whether the plaintiff has a title to the land in suit or Nrisingha Hari Das has title to the same, is *res judicata* between them by reason of this decision, and it must be held that as against the plaintiff, Nrisingha Hari Das has no title to the land in suit. The defence of the defendant was that inasmuch as she had attorned to Nrisingha Hari Das believing bona fide that he had a superior title the plaintiff could not recover rent. Her further defence was that inasmuch as she repudiated her tenancy under the plaintiff and with notice to the plaintiff attorning to Nrisingha Hari Das, the suit for rent is not maintainable. Both these pleas found favour in the Courts below. In my view the Courts below have gone wrong.

3. It is well settled that a tenant cannot terminate his tenancy by repudiating the tenancy, or by denying his landlord's title. Such an assertion on his part only gives the landlord a right or option to terminate the tenancy and to recover khas possession. But the landlord need not exercise that option at all. If he ignores the repudiation he can still go on receiving rent and go on suing the tenant for rent. In a series of cases this principle has been laid down, and it is discussed in detail in a judgment of this Court in Bejoy Chand Mahatap v. Gurupada Haldar (1928) 32 CWN 720. I do not agree with either of the Courts below or with the contention of the advocate for the respondent that the fact that the defendant repudiated her tenancy under the plaintiff and with notice to him attorning over to Nrisingha Hari Das is any defence to the suit for rent.

4. In order to furnish good defence, it is necessary for the defendant to prove not only the attornment to Nrisingha Hari Das but to prove that Nrisingha Hari Das had a title paramount to the title of the plaintiff who is the landlord of the defendant. The mere fact that she believed that Nrisingha Hari Das had a better title would not be sufficient. Now the result of the suit which Nrisingha Hari instituted against the plaintiff is conclusive on the question of his title as against the plaintiff. The defendant cannot urge that Nrisingha Hari Das is a person who has a superior title to that of the plaintiff in the land in suit. This is a position which has been firmly established in a series of cases and I may refer to one of them, viz., the judgment of N.R. Chatterjee, J., in Banka Behary Ghose v. Madan Mohan Roy, 1921 Cal 532. As the defendant failed to prove that Nrisingha Hari is a person having a better title to the land in suit, I hold that the plaintiff is entitled to rent from defendant 1. The result is that the decrees of the lower Courts are set aside and in lieu thereof a decree is passed in favour of the plaintiff for the rent and damages claimed in the suit. The plaintiff will have costs of this Court as also of the Courts below against defendant 1.