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Court : Kolkata

Decided On : Jan-11-1916

Reported in : 32Ind.Cas.614

Judge : D. Chatterjee and ;Beachcroft, JJ.

Appellant : Abdul Hamid and ors.

Respondent : Udoy Chandra Acharjee and ors.

Judgement :

1. The plaintiff is an occupancy raiyat. One Zamir Khan was an under-raiyat under him under a lease of 1303, which was to last up to 1311. It appears that in or about 1304 Zamir exchanged the land of his sub-raiyati holding with the defendants and put them in possession. It has been found that the plaintiff was aware of this. The plaintiff nevertheless continued receiving rent of this holding in the name of Zamir. It was admitted in the case that such a sub-raiyati holding is not transferable without the consent of the raiyat landlord. The exchange was evidently a transfer and the conduct of the parties seems to show that the plaintiff did not treat the exchange as working forfeiture of the rights of Zamir. He, therefore, accepted the exchange as one that was valid and if he did so he accepted the defendants-appellants as his tenants. Having done so, the plaintiff cannot treat the defendants as trespassers and eject them without notice under Clause (6), Section 49, of the Bengal Tenancy Act. As the cause of action upon which the plaintiff came to Court, was that he had received an isafanamah from his tenant, Zamir, in 1317

and was thereby empowered to take khas possession, has failed and as the facts show that he had accepted the defendants as his sub-raiyats by the exchange, the suit for ejectment must fail.

2. The appeal is, therefore, decreed with costs.

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