

Moslem Molla and ors. Vs. (Executor to the Estate of Late) Subal Chandra Chandra Roy Naraln Chandra and ors.

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Court : Kolkata

Decided On : Jun-13-1934

Reported in : AIR1934Cal716,153Ind.Cas.1047

Appellant : Moslem Molla and ors.

Respondent : (Executor to the Estate of Late) Subal Chandra Chandra Roy Naraln Chandra and ors.

Judgement :

M.C. Ghose, J.

1. This is an appeal by the defendants in a suit instituted by the plaintiffs for a declaration that the defendants were not permanent but ticca tenants of a part of the land and trespassers in respect of the other part that they were attempting to raise a pucca structure on the land which they had no right to do and the plaintiffs prayed for an injunction that the defendants be restrained from doing so. The first Court granted the plaintiffs a decree as prayed for. The Court of appeal below has affirmed that decree.

2. In this Court it is urged that upon the facts found by the Courts below the defendants should be held to have a permanent right to the land. The defendants produced a patta dated the year 1830 which purports to confer a permanent right

on the defendants predecessor. The trial Court rejected the patta as spurious and the appellate Court accepted that view. In the absence of a patta the Courts below have held that the origin of the tenancy is unknown. It has been proved by the defendants and admitted on the side of the plaintiffs that the defendants, their father and grandfather have been residing on the said land and they have been paying rent at a uniform rate of Rs. 4 per annum for about 4 cottahs of land. There are common structures on the land but no permanent structures. The Court of appeal below held that mere long possession at a uniform payment of rent and succession from father to son and son's son, are not sufficient for raising the presumption of permanency in the absence of a pucca structure which unequivocally points to the permanent nature of the tenancy. The Court of appeal below was much influenced by the fact that the structures on the land are common structures such as poor people have and not permanent structures. Various cases have been cited, namely, Moharam Chaprashi v. Tela Muddin Khan (1912) 13 IC 606, Abdul Hakim v. Elahi Baksha, 1925 Cal 309. Nibaran Chandra v. Krista Mohan, 1928 Cal 597 and Manmatha Nath v. Pramatha Nath, 1934 Cal 288. Upon a consideration of the judgments in these cases it is clear that mere absence of a pucca structure is not determining factor on the question whether a tenancy is permanent or not. Nor is it sufficient for an inference of permanency that the tenants have possessed the land for a long period succeeding from father to son on payment of uniform rent. Those facts are not alone sufficient. The presence of a permanent structure would be a notice to the landlord that the tenant is claiming a permanent right.

3. The absence of a permanent structure may lead to the inference that the landlord had no notice of such a claim. In this case however there is one circumstance which differentiates it from all the reported cases, namely, in 1888 over 40 years before the present suit the plaintiffs' predecessor instituted a suit for ejectment against the defendants alleging that they were mere ticca tenants and had no permanent rights. The defendants in reply filed a written statement claiming permanent right. The suit was withdrawn by the plaintiffs, since then for 40 years the plaintiffs and their predecessors have had notice that the defendants were claiming a permanent right. In 1918 another suit was instituted to eject the defendant but that suit was also withdrawn. The present suit was instituted in

1929. The occasion for it was that at the end of 1928 the defendants were attempting to build a brick structure on the land. The learned advocate for the respondents relies chiefly on the decision in Kamal Kumar Dutt v. Nanda Lal Duby, 1929 Cal 37. Having carefully gone through the judgment in that case it appears that the present case is differentiated from that case by the fact that for 40 years the landlords had notice that the tenants were claiming permanent right, yet they had suffered them to remain on the land for 40 years before instituting this suit. I am of opinion that the circumstances of this case establish the presumption that the tenants have a permanent right. The appeal is therefore allowed and the plaintiffs' suit dismissed with costs in all the Courts. Leave to appeal under the Letters Patent is allowed.

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