

Hiranmoy Kumar Saha and ors. Vs. Banka Behari Ghose

Hiranmoy Kumar Saha and ors. Vs. Banka Behari Ghose

SooperKanoon Citation : sooperkanoon.com/873413

Court : Kolkata

Decided On : Nov-22-1916

Reported in : 37Ind.Cas.852

Judge : D. Chatterjee and ;Walmsley, JJ.

Appellant : Hiranmoy Kumar Saha and ors.

Respondent : Banka Behari Ghose

Judgement :

1. It has been found by the lower Court that the land in dispute is in the zemindari of the pLaintiffs. It has been also found that the defendant took settlement of the same from a neighbouring zemindar in good faith. Upon these findings, the first Court allowed the defendant to remain in possession and the pLaintiffs were given a decree for possession by receipt of rent from the defendant. In the lower Appellate Court, it was contended on behalf of the pLaintiffs, that it was not sufficient to find the bona fides of the tenant and that it was further necessary to find whether the person from whom the tenant took settlement, was acting bona fide in making the settlement with him. The learned Judge, however, thought that it was not necessary to enter into that question as it was, in his opinion, immaterial whether the lessor made settlement in good faith or otherwise. That, however, does not seem to be the correct view of the law as laid down in some of the latest cases.

2. The case relied on in the lower Court was the case of *Sinai Lal Pakrashi v. Kalu Pramanik* (2)20 C. 708 : 10 Ind. Dec. (N.S.) 477. That case decided that if a tenant took settlement from a trespasser in good faith, he might be considered a tenant in accordance with the definition of the word in the Bengal Tenancy Act and be allowed to retain possession. The question of the bona fides of the person so letting him in was not raised in that case and probably could not be raised, as the landlord in that case had been litigating for title to the property. That case formed the subject of consideration in the case of *Upendra Narain Bhattacharya v. Protap Chandra Pardhan* (1)8 C. W.N. 320 : 31 C. 703. and it was held that it was necessary to find whether the landlord letting in a tenant was acting bona fide in doing so. That case has been followed in a number of cases which have been considered in the case of *Krishna Nath Chakravarti v. Muhammad Wafiz* 31 Ind Cas. 789 : C. L.J. 563 at p. 565 : 21 C.W.N. 93. and the latest opinion on the subject is that the bona fides of the persons from whom the tenant takes settlement have also to be considered in deciding whether the tenant is to be allowed to retain possession as a tenant. We see no reason to differ from the view expressed in these cases.

3. The learned Vakil for the respondent has referred to some other cases, viz., *Peary Mohun Mondal v. Radhika Mohun Hazra* 8 C.W.N. 315 : 5 C.W.N. 681 : 11 288.; *Madhu v. Sabar Ali* 6 Ind. Cas. 177 : 14 C.W.N. 681 : 11 288. and *Tepu Mohammad v. Tefayit Mohammad* 29 Ind. Cas. 216 : 19 C.W.N. 772. But none of these cases decided the exact point now raised by the learned Vakil for the appellant.

4. That being so, the appellant is entitled to a decision of the Court below upon the point now raised by him as to whether Madan Mohan in letting out the land to the defendant acted bona fide. The case was argued on this point alone. No other point was pressed.

5. The judgment of the Court below is set aside and the case sent back for a decision on the above point. If the Court finds that Madan Mohan acted bona fide in making the settlement defendants will retain their possession.

6. Costs will abide the result.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com