

Calcutta High Court

Shambhu Chandra Halder vs Kanai Lal Goswami And Ors. on 2 June, 1936

Equivalent citations: AIR 1936 Cal 581

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JUDGMENT Edgley, J.

1. In the suit out of which the present appeal arises the plaintiffs sued the defendant for ejectment from a certain plot of land. It was decided by both the Courts below that the defendant had been properly and legally ejected and it was decided that the plaintiffs should get khas possession of the land in suit subject to the payment to the defendant of the sum of Rs. 700 as compensation for the cost of the materials of the structures which had been erected by the defendant on the suit land.

2. The first point urged by the learned advocate for the appellant in this case is that the defendant has not been validly ejected owing to the fact that, according to the terms of the notice, whatever the plaintiffs' rights may have been under the terms of the kabuliyat they had nevertheless undertaken not to eject the defendant until they had compensated the latter for the cost of the materials of the structures in the suit land. It was therefore contended that they had waived their right to eject the defendant until such compensation had been paid or at any rate tendered to the defendant. The kabuliyat appears to have created a monthly tenancy in favour of the defendant and, according to its terms the defendant was entitled to hold the demised land from month to month on payment of rent at the rate of Rs. 7-8-0 per mensem, but it was agreed that the defendant would, upon the receipt of a proper notice, vacate the demised land and thereupon the plaintiffs would be required to pay him compensation in respect of the materials of the structures which he had erected on the land according to the condition at the time of ejectment. The notice Ex. 4, which was served upon the defendant required him to vacate the demised land in accordance with the terms of the kabuliyat on or before the last day of the month of Aswin 1337. The notice then goes on to say:

You are also further informed that if, according to the terms of the kabuliyat, you will take from us the present day price of the materials bricks, wood of the structures etc., erected by you then, after receipt of such price, from us you will give up possession of the land with the structures, etc.

3. It is argued by the learned advocate for the appellant that inasmuch as the price of the materials had not even been tendered to the defendant, the notice, Ex. 4, became ineffective. It is urged on the other hand by the learned advocate for the respondent that the clause in the notice with regard to the payment of compensation money should be regarded as a surplusage and should not be deemed to be a waiver on the part of the plaintiffs of their right to eject the defendant at the end of Aswin 1337.

4. There can be no doubt that inasmuch as the notice might have the effect of depriving the defendant of his right to occupy the land in suit according to the terms of the lease it must be very strictly construed. It is not contended that the defendant was not willing to receive compensation. It, therefore, follows that under a strict construction of the notice the plaintiffs undertook either to give or tender to the defendant the reasonable price of the materials of the defendant's structures before compelling the latter to give up possession of the demised land. Undoubtedly according to the terms

of the lease the plaintiffs were not in any way bound to do this, but it cannot be contended that they were not at liberty to waive any express rights which they may have had under the terms of the lease and in this particular case they appear to have done so. It has not been suggested that the plaintiffs either paid the defendant the price of the materials of the structures or even tendered to him any reasonable amount as representing such price. This being the case I am of opinion that the plaintiffs are not entitled to evict the defendant by reason of the notice Ex 4.

5. With regard to the question as to the adequacy of the price of the materials, there is a clear finding of fact in the Courts below that the value of these materials would be Rs. 700. The first Court arrived at this valuation after considering the evidence of certain competent valuers and I am of opinion that this finding is based on adequate material. If, therefore, in this case an adequate notice had been given it would have been competent for the plaintiffs to evict the defendant by paying him the sum of Rs. 700 as compensation.

6. Having regard to the fact that the notice Ex. 4 is inadequate for the purpose of ejecting the defendant, this appeal must be allowed. The judgments and decrees of the Courts below are set aside and the plaintiffs' suit will stand dismissed, subject to their right to eject the defendant at any time hereafter on serving him with a proper notice and paying him the sum of Rs. 700 as compensation for the materials of the structures. I make no order as to the costs of this appeal. The parties will bear their own costs in the Courts below.