

CALCUTTA HIGH COURT

Krishna Nath Chakravarti

Vs

Muhammad Wafiz

(A Mookerjee, C.J. and Beachcroft, J.)

23.07.1915

JUDGMENT

A Mookerjee, C.J.

1. This is an appeal by the defendant in a suit for recovery of possession of land on declaration of title. The disputed property belonged to one Parbaty Sankar Pandey whose interest therein was terminated by a sale in execution of a decree held on the 22nd September 1910., On the 24th November 1910, the plaintiff took a lease of the land from Parbaty Sankar Pandey and, in his own words, went to take possession. The result was a dispute with the defendant which culminated in a proceeding under Section 107, Criminal Procedure Code. The Magistrate found on the 22nd March 1911, that the defendant (then complainant) was in possession and that the accused (now plaintiff) was likely to commit a breach of the peace. He consequently directed that the plaintiff should be bound down and should execute a bond to keep the peace for one year, on the 15th June 1911. The plaintiff instituted this suit for declaration of his title under the lease from Parbaty Sankar Pandey and for recovery of possession. The Courts below, have concurrently found that the lessor of the plaintiff had no subsisting title on the day the lease was granted to him. But while the Court of first instance held that the plaintiff had acquired no title under the lease, the Subordinate Judge has come to the conclusion that the principle of the decision of the Full Bench in *Binad Lal Pahrashi v. Kalu Pramanih*¹, is applicable and that the plaintiff is entitled to a decree for possession as against the defendant, who has failed to establish any title to the property. The question for consideration consequently is, whether this case is governed by the principle of the decision of the Full Bench, namely, that an agricultural tenant who enters upon land, whether it be firm or alluvial *Nundo Kumar Nasher v. Banomali Gayan*² *Rajendra Nath Roy v. Nanda Lal Guha*³ and holds under a de facto proprietor bona fide, is entitled to be treated as raiyat, although the de facto proprietor is subsequently proved to be not the real owner. *Ameer Hossein v. Sheo Suhae*⁴ *Zoolfun Bibee v. Radhica Prosonno Chunder*⁵

3. As was pointed out by this Court in the case of *Upendra Narain Bhattacharjee v. Pratap Chunder Pardhan*⁶ this principle is an encroachment upon the ordinary rule of law that a grantor is not competent to confer upon the grantee a better title than what he himself possesses *Durgi Nikarini v. Goberdhan Bhose*⁷ and the Courts have repeatedly ruled that the doctrine must be cautiously applied and is not to be extended. Thus in *Sharoop Dass Mondal v. Joggessur Roy*⁸ and *Jonah Ali v. Rakibuddin*⁹, the Court refused to apply this doctrine to zerait lands. In *Madan*

*Mohan Singh v. Raj Kishori Kumar*¹⁰ the Court refused to apply the principle in derogation of the rule of lis pendens. Again in *Kazi Newaz Khoda v. Ram. Jadu Dey*¹¹ *Peary Mohun Mondal v. Radhica Mohun Hazra*¹² *Upendra Narain Bhattacharjee v. Pratap Chunder Pardhan*¹³, the Court refused to apply the doctrine to cases where the landlord was not in possession in good faith, and it cannot now be disputed that want of good faith either on the part of the lessor or the lessee, makes the rule inapplicable. This accords with the decision in *Tepu Mohammad v. Tefayit Mohammad* 29 Ind. Cas. 216 : 19 C.W.N. 315,(supra) that in order to make the principle applicable, the lessor must be the do facto landlord in possession and must have placed the lessee in possession of the land. This does not in any way conflict with the cases of *Atal Rishi v. Lahshmi Narain Ghose*¹⁴, and *Golam Panja v. Hurish Chunder* 17 W.R. 552(Supra) where the lessee was brought upon the land by an ijaradar for a term who had authority to settle the land with cultivators. We have consequently the position that in order to make the principle available, it is essential that the lessor should be in possession of the disputed property as de facto landlord and that in good faith, he should have inducted into the land a cultivator who has accepted the settlement in good faith.

4. Tested in the light of this principle, the plaintiff has no case. It is clear that he took his lease from a person who had no title to confer on him, and he never obtained juridical possession of the disputed property. When he attempted to take possession, he was resisted; the result was a criminal case in which it was found that he was not in possession and that it was necessary to bind him down to keep the peace, so that he might not be free to interfere with the possession of the defendants. In a case of this description, the principle of the rule, in *Binad Lal Pakrashi v. Kalu Pramanik* 20 C. 708(Supra), can have no possible application.

5. We may add that it was jointly suggested that no reference was permissible to the finding of the Criminal Court on the Question of possession. But in view of the decision of the Judicial Committee in *Dinomoni Chowdhurani v. Brojo Mohini Chowdhurani*¹⁵ it is clear that the judgment, in the criminal case was admissible in evidence to show what order had been made, who the parties to the dispute were, what the land in dispute was, and who was held entitled to possession. But, even apart from that judgment, there is sufficient evidence on this record to show that the plaintiff never obtained such possession of the land as would entitle him to claim the status of a raiyat although he had taken settlement from a person who had no title to confer on him. Indeed the deposition of the plaintiff shows that it is not his case that he obtained the requisite possession. We must hold accordingly that the plaintiff has no enforceable claim even as against the defendant, who has failed to establish his alleged title.

6. The result is that this appeal is allowed, the decree of the District Judge set aside and the suit dismissed with costs in all the Courts.

Cases Referred.

120 C. 708
229 C. 871
326 Ind. Cas. 977 : 9 C.L.J. 595 : 18 C.W.N. 1206
419 W.R. 338
53 C. 560 : 1 C.L.R. 328
68 C.W.N. 320 : 31 C. 703
724 Ind. Cas. 183 : 20 C.L.J. 448 : 19 C.W.N. 525

826 C. 564 : 3 C.W.N. 464
91 C.L.J. 303 : 9 C.W.N. 571
1017 Ind. Cas. 1 : 17 C.L.J. 384
1134 C. 109 : 5 C.L.J. 33 : 11 C.W.N. 201
125 C.L.J. 9 : 8 C.W.N. 315
138 C.W.N. 320 : 31 C. 703
142 Ind. Cas. 417 : 10 C.L.J. 55
1529 C. 187 : 29 I.A. 24 (P.C.) : 6 C.W.N. 386