

CALCUTTA HIGH COURT

Rajendra Nath Chandra

Vs

Dinu Prodhan

(Guha ,J.)

20.05.1930

JUDGMENT

Guha, J.

1. The Courts below have agreed in their decision on the question of the plaintiffs' title to the lands in suit; they have differed however on the question as to whether the plaintiffs were entitled to khas possession. The plaintiffs' suit as laid was resisted by defendant 1 and so far as claim for khas possession was concerned it was pleaded that he had acquired right of occupancy in the lands, and was not therefore liable to be evicted as a trespasser. An issue was definitely raised on the question of khas possession, namely Issue 5. The trial Court mainly on the interpretation of the mortgage deed, Ex. 1 in the suit, came to the conclusion that the plaintiffs who have stepped into the shoes of the mortgagors were entitled to such khas possession as the mortgagors themselves were entitled to, under the terms of the document. The Court of appeal below, on a reading of the document, has held that it could not be said that by the terms of the mortgage bond, Ex. 1, there was no right in the mortgagee to establish tenant on the land. In that conclusion I agree. The document did not prevent the mortgagee from settling tenants in the land, and there was no stipulation for keeping the land in his khas possession during the period of the mortgage. It may be accepted as a general proposition that a mortgagee in possession for a limited period is not entitled to create an interest which was to continue after the termination of his period of possession; but the position in the present case being that the mortgage deed, Ex. 1, did not stand in the way of tenants being settled on the land, the tenant so settled whose interest in the the land was well defined under the law, could not be evicted without re-course being had to the provisions of law applicable to the eviction of a tenant in occupation. If the tenant on the land had obtained possession from a person who was himself in possession of the land at the time when the tenant was so settled, and there was no absence of good faith in the settlement, the claim for khas possession could very well be resisted on the strength of the principle enunciated in *Binad Lal Pakrashi v. Kalu Paramanik*¹ and the tenant on the land would be protected from eviction as a mere trespasser.

2. The above is the footing upon which the case appears to have been argued in the lower Court, and that is the aspect of the case that has been presented in the grounds of appeal to this Court. On the interpretation of the mortgage bond, Ex. 1, the position is abundantly clear that defendant 1 was not a trespasser on the land and was not liable to eviction as claimed in the suit. He is a person who lawfully came to be in possession as a tenant under the mortgagee for a term, and there was nothing to support the position that he was to be ejected on the redemption of the mortgage. The clear recitals in the document would not lend support to such a contention as is advanced on behalf of the plaintiffs.

3. It has further been, argued that the provisions contained in Section 60 and Section 62, T.P. Act, would entitle the plaintiffs to a decree for khas possession as claimed in the suit. It need only be stated that the mortgagor may be entitled to possession under the law, but there is nothing contained in any of the provisions referred to above, which in any way militates against the position that the mortgagor was in the present suit, entitled to such possession as the land was capable of, in view of the fact that in accordance with the terms of the mortgage, there was tenant on the land, as against whom there could not under the law be any decree for ejectment on the ground of his being a trespasser. As I have indicated already, I agree with the view taken by the Court of appeal below that it could not be said that by the terms of the mortgage bond, Ex. 1, there was no right to settle tenants on the land, and the tenants so settled have acquired rights, which rights have to be respected when the mortgagor or person claiming through the mortgagor asserts his right to recover possession. Khas possession may not be possible in a case like the present; the plaintiffs to get possession by realization of rent from defendant 1.

4. A question relating to the good faith in the matter of settling defendant on the land was raised by the learned advocate for the appellants. There is nothing to show want of good faith in the presents case on the terms of the document, Ex. 1, and where the defense was that the tenant was in possession even before the settlement by the mortgagee.

5. I have no hesitation in coming to the conclusion that the view taken by the Court of appeal below in the case is correct. The appeal therefore fails and is dismissed with costs.

Cases Referred.

1(1893) 20 Cal. 708