

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Gordon.

PROSONNA COOMAR SINGHA (ONE OF THE DEFENDANTS)

v. RAM COOMAR GHOSE (PLAINTIFF).*

1888

May 28.

Right of user—License to use land of another, coupled with grant—Revocation of License—Right of licensee to damages.

A license to use the land of another, unless coupled with a grant, is revocable at the will of the licensor, subject to the right of the licensee to damages if revoked contrary to the terms of any express or implied contract.

Wood v. Leadbitter (1) applied.

SUIT for declaration of right over a plot of land and for an injunction.

The plaintiff claimed, under a solenamah entered into between himself and the defendant, to have the use of a plot of land belonging to the defendant as his privy; the defendant admitted the solenamah, but objected to the use of the land for the purpose referred to, and contended that the solenamah was obtained from him whilst a minor, and that the suit was barred.

The Munsiff found that the land had been used by the plaintiff as alleged, that there was no defence to the suit, and granted a decree prohibiting the defendant from preventing the plaintiff using the land for the purpose alleged in his plaint.

The Subordinate Judge on appeal upheld this decree.

The defendant appealed to the High Court.

Mr. *H. Bell* (with him Baboo *Tarucknath Sen*) for the appellant contended that the license granted by defendant to the plaintiff was revocable at any time subject to a liability to pay damages. *Wood v. Leadbitter* (1).

Mr. *Twidale* and Baboo *Durga Mohun Das* for the respondent.

The judgment of the Court (PETHERAM, C.J., and GORDON, J.) was delivered by

PETHERAM, C.J.—This is a suit by the plaintiff to have his rights declared under a contract made between him and the

* Appeal from Appellate decree No. 1449 of 1888 against the decree of Baboo Purno Chunder Shome, Subordinate Judge of Dacca, dated the 26th of May 1888, modifying the decree of Baboo Purno Chunder Chowdhry, Munsiff of Munsheegunge, dated the 19th of May 1887.

defendants, and to obtain an injunction against the defendants restraining them from breaking the contract.

The contract is in respect of some land as to the ownership of which some years ago there was a dispute between the plaintiff and the defendants. That dispute was finally settled by the present plaintiff giving up all claim to the land, and admitting that it was the property of the defendants, and in consideration of his doing so the defendants agreed to allow him to go on to the land at all times for the purpose of using a particular corner of it as a privy. That went on for a great number of years apparently, but in course of time the defendants used this land for purposes inconsistent with its continued user in this way, and though the plaintiff might have gone on to the land and used it in the same way, he would have become a nuisance, and what he did would have become a nuisance, and it was under these circumstances that the defendants refused to allow him to go there any more for that purpose, and it is to assert this right that this action has been brought.

This action has been defended in the two lower Courts on various grounds. I should say that no claim was advanced for damages, but only for an injunction to compel the defendants to allow the plaintiff to use the land in this way. But the point was never made, until the matter came to this Court, that this was a license which was revocable at any time subject to the liability to pay damages. That point has been taken here, and we think it is a perfectly good one. The law, so far as we have been able to ascertain, is the same in this country as it is in England, there being so far as we can see no common law in this country on the subject and no statutory law either. The law in England is clearly laid down in the case of *Wood v. Leadbitter* (1). The Courts have acted upon the law as there laid down ever since, and it has always been held to be good law and binding upon them. That case decided that the license to go upon another man's land, unless coupled with a grant, was revocable at the will of the grantor, subject to the right of the other to damages if the license were revoked contrary to the terms of any express or implied contract.

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That being so, we think that the Munsiff and the learned Judge were both wrong in granting an injunction in this suit, but inasmuch as this point was not taken below, and there is no doubt about it that the defendant has acted in this case in a high-handed manner, he has revoked this license and has prohibited the plaintiff from using the land without offering compensation; therefore, although we think that this appeal must be decreed and the suit dismissed, we think that each party ought to bear his own costs all through. In the result then, this appeal will be decreed and the plaintiff's suit dismissed without costs.

Appeal allowed.

T. A. P.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Gordon,

KRISTO BULLUV GHOSE AND OTHERS (DEFENDANTS) v. KRISTO LAL SINGH AND ANOTHER (PLAINTIFFS).^o

1889.
May 29.

Bengal Tenancy Act (VIII of 1885), s. 12—Transfer of a permanent tenure—Permanent tenure, Registration of,

The transfer of a permanent tenure under s. 12 of the Bengal Tenancy Act is complete as soon as the document is registered.

THIS was a suit brought by two putnidars to recover from their durputnidars rent from Bysack to Kartick 1292 and from Aughran 1292 to Kartick 1293, together with cesses.

The defendants admitted they held the durputni tenures up to the 1st Bysack 1293, on which date they sold the tenure to one Keshub Chunder Roy, whose name was duly registered in place of theirs in the Sherista of the putnidars. The deed of sale was duly registered and the putnidars fee duly deposited with the Sub-Registrar under s. 12 of the Bengal Tenancy Act. The notice under that section was however served on one only of the putnidars.

The Munsiff gave a decree to the plaintiffs for the rent claimed, holding that the notice under s. 12 was bad, it not having been served on both the plaintiffs.

* Appeal from Appellate Decree No. 1549 of 1888, against the decree of H. Anderson, Esq., Judge of Moorshedabad, dated the 8th of June, 1888, affirming the decree of Baboo Loke Nath Nandi, Munsiff of Kandi, dated the 26th of December 1887.