

(1919) 12 CAL CK 0001
In the Calcutta High Court

Abdul Gani

APPELLANT

Vs

Radhika Mohon Dey Sarkar and Hari Mohan Sarkar and
Others

RESPONDENT

Date of Decision : 09-12-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 5

Citation : 55 Ind. Cas. 249

Hon'ble Judges : Ernest Fletcher, J

Bench : Single Bench

Judgement

Ernest Fletcher, J.—This is an appeal preferred by the defendant No. 1 against the decision of the learned Subordinate Judge of Tipperah, dated the 12th December 1918, reversing the decision of the Munsif of Commilla. The suit out of which the present appeal arises was one brought by the plaintiff to recover possession of certain land, and the ground on which the plaintiff sought to recover possession was that he had the interest of a raiyat and that the defendant was an under-raiyat whose term had expired. The only question in the appeal is this: Has the plaintiff established that the defendant was an under-raiyat who held for a term of years and whose term has expired? It is a common fact between the parties that the defendant was the tenant of the plaintiff. The defendant set up the case that the plaintiff was a tenure-holder and that the defendant was a raiyat who had obtained a right of occupancy. Now in the present case, the holding held by the plaintiff exceeded an area of 100 bighas and, under the provisions of Section 5 of the Bengal Tenancy Act, there is a presumption that the interest held by the plaintiff was that of a tenure-holder. But that presumption is a rebuttable presumption and the learned Judge, having, properly directed himself to the question of law and having before him ample evidence, came to the conclusion that the plaintiff's interest was that of a raiyat and, therefore, the interest of the defendant must be that of an under-raiyat and that consequently the defendant had no right of occupancy. That finding has been challenged on the ground that the evidence on which the learned Judge

acted was illegal. By the term illegal, I presume it is meant inadmissible. Evidence was clearly admissible to show that this holding, although exceeding 100 bighas was, in fact, a raiyati holding and not a tenure.

2. Another point has been urged by the learned Vakil who has argued the appeal, namely, that in the present case the plaintiff, although his interest may have been originally that of a raiyat, has by his conduct converted himself, so far as regards this under-raiyati, into the position of a mere rent receiver. The facts found in this case show that the plaintiff has not undergone this conversion and, in fact, the facts found by the learned Judge in this case are exactly opposed to those found by the learned Judges in the case of *Mohesh Jha v. Manbharan Mia* 5 C.L.J. 522.

3. I think no ground has been shown to me why the judgment of the lower Appellate Court should be disturbed. The present appeal, therefore, fails and must be dismissed with costs.