
(1922) 01 CAL CK 0026
In the Calcutta High Court

Abhaipada Sircar by his brother and next friend Ram Pada
Sirkar and Others

APPELLANT

Vs

Ator Dome

RESPONDENT

Date of Decision : 12-01-1922

Acts Referred:

Citation : 67 Ind. Cas. 66

Hon'ble Judges : Newbould, J

Bench : Single Bench

Judgement

Newbould, J.—This appeal is preferred against a decree of the District Judge of Murshidabad, reversing decree of the Munsif, First Court, Berhampur, for ejectment of the defendant. The facts of the case are as follows: The land in suit is an area 4 cottas and two chittaks and forms part of a jama of 10 cottahs which at one time belonged to one Patai Sheikh and was purchased at an execution sale by the father of the plaintiffs. After his purchase the plaintiff's father sub-let a portion of it to the defendant who occupied it as homestead. The plaintiffs brought this suit on the ground that the defendant's tenancy had been terminated by notice to quit under the Transfer of Property Act. The lower Appellate Court 1 as dismissed the suit on the ground that the Bengal Tenancy Act and not the Transfer of Property Act is applicable.

2. On behalf of the appellant the following statement of law in the judgment of the lower Appellate Court is not disputed: "If the defendant can establish that the jama of 10 cottahs contained at the time of its creation agricultural land as well as homestead, the contention that the Bengal Tenancy Act applies must prevail." It is contended on behalf of the appellant that though the lower Appellate Court has in the statement of the law rightly thrown the onus on the defendant he has in discussing the evidence shifted the burden on to the plaintiffs, and further that that Court has not come to a finding that the jama of ten cottahs contained at the time of its creation agricultural land.

3. There does not seem to be much substance in the first objection, There is no

direct evidence as to the commencement of the tenancy. But in discussing the evidence as to the use to which the land was put since the time of Patai Sheikh the lower Appellate Court has considered the evidence on both sides and has come to a finding that since that time the jama of ten cottahs included the agricultural or horticultural land. That finding I must accept in second appeal.

4. The question remains whether that finding is sufficient. It is not a finding which expressly complies with the condition set out by the learned Judge on the earlier part of his judgment. There is not a district finding that the jama of ten cottahs contained agricultural land at the time of its creation. But reading the judgment as a whole, I hold that the learned Judge meant to come to such a finding. After coming to the finding stated above the learned Judge said: "Therefore, in accordance with the ruling in Babu Ram Roy v. Mahendra Nath 8 C.W.N. 454 the defendant must be held to be an under-tenant under the Bengal Tenancy Act." The ruling cited could not be made applicable unless the tenancy contained agricultural land at the time it was created. In the case of Ramapada Roy v. Midnapur Zemindary Co. Ltd., 16 Ind. Cas. 376 : 16 C.L.J. 322 it was held that where the terms upon which a tenancy was created cannot be proved by direct evidence the subsequent conduct of the parties may be considered with a view to determine the nature of the tenancy. I think the learned Judge by oversight has omitted to state that from the use of the land since the time of Patai Sheikh he draws a further inference that the jama from the time of its creation was an agricultural tenancy. Taking this view I hold his decision is right and dismiss this appeal with costs.