
(1911) 08 CAL CK 0033
In the Calcutta High Court

Afazuddi Khan

APPELLANT

Vs

Prasanna Gain

RESPONDENT

Date of Decision : 25-08-1911

Acts Referred:

Bengal Tenancy Act, 1885 — Section 159

Citation : (1912) ILR (Cal) 138

Hon'ble Judges : Lawrence H. Jenkins, J;D. Chatterjee, J

Bench : Division Bench

Judgement

D. Chatterjee, J.—The only question that arises for decision in this case is whether the position of the plaintiffs was that of tenants whose rights may be classed as "protected interests" within the meaning of Section 159 of the Bengal Tenancy Act. The plaintiffs held under a sub-lease granted by Ganesh Chandra Chatterjee and others, who held under a permanent lease granted by Brojendra Kumar Sen, Brojendra Kumar Sen again holding under a permanent lease granted by Prasanna Kumar Mitra and others. It is contended" that the lease given by Prasanna Kumar Mitra and others to" Brojendra Kumar Sen authorized Brojendra Kumar to grant-sub-leases, and as the sub-lease granted by Ganesh. Chatterjee and brothers was a sub-lease, and as it was B therefore within the authority granted by the lease given to Brojendra Kumar Sen, it was a "protected interest" within Clause (g) of that section. The words of the lease are that the lessee Brojendra Kumar Sen was to enjoy the property by making projabili, etc., that is, by settling tenants and otherwise. Admittedly Brojendra Kumar Sen settled Ganesh Chandra Ohatterjee and others upon the land as sub-lessees under him. The right and interest of Ganesh Chandra Chatterjee was therefore granted by Brojendra Kumar Sen under the authority received by him from Prasanna Kumar Mitra. That being so, the right and interest of Ganesh Chatterjee and therefore of the plaintiffs do not appear to be such as can be interfered with by a purchaser under the Bengal Tenancy Act. The defendants Nos. 4 to 6, therefore, were not entitled to evict the plaintiffs.

2. The decree of the lower Appellate Court, therefore must be restored with costs.

Jenkins C.J.

3. I agree with the conclusion of Mr. Justice Chatterjee. The case appears to me to turn upon the precise force to be attributed to the Bengali words set out in the judgment of the learned Munsif. My learned colleague, who is eminently qualified to express an opinion as to that, has come to the conclusion that the words contained in the lease from the Mitters to Brojendra Kumar Sen amounted to an express permission in writing to create the interest, which in fact was created in favour of Gonesh Chandra Chatterjee. This is not only the view of Mr. Justice Chatterjee, but also the view of the Munsif who had fully considered the precise force of the Bengali words; and accepting, as I do, the interpretation placed on these words, the conclusion which my learned colleague has expressed is the only one at which it is possible to arrive. I agree with him that the judgment of Mr. Justice Doss must be set aside, and the decree of the lower Appellate Court confirming that of the Munsif affirmed with costs, including all the costs of the High Court.