
(1944) 04 CAL CK 0003
In the Calcutta High Court

Asmatennessa Bibi

APPELLANT

Vs

Karimaddi Bepari and Others

RESPONDENT

Date of Decision : 24-04-1944

Acts Referred:

Bengal Tenancy Act, 1885 — Section 26G

Citation : AIR 1944 Cal 376

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—This appeal is directed against an Order of the Subordinate Judge rejecting an application u/s 26G, Ben. Ten. Act, which was allowed by theiMunsif. The appellant purchased the equity of redemp. tion on 28th March 1929 a few days before the Bengal Tenancy Act, 1928, came into force. The language used by the learned Subordinate Judge might suggest that he thought that the transfer was not good even against the original mortgagor or mortgagee. Upon this basis ground No. 3 is taken in the grounds of appeal to this Court. On a perusal of the judgment however, I am satisfied that the learned Judge never intended to lay down any such proposition. He merely meant to say that the appellant was not entitled to the special privileges of this section. The transfer in the appellant's favour was not binding on the landlord. Mr. Barman, therefore, contended that as a result the appellant is not entitled to maintain the present application. His argument is that Section 26G, Ben. Ten. Act, is confined to occupancy raiyats and, as the transfer in favour of the appellant did not bind the landlord, he is not an occupancy raiyat. For this purpose he relied by analogy, as the learned Subordinate Judge did, on the decision of Edgley J. in Annda Prosad Talukdar and Others Vs. Ramjan Sarkar, , This decision was considered by a Division Bench in Nripendra Chand Saha Chowdhury and Others Vs. Jowadali Mondal, , In my judgment those decisions are not apposite to the present matter. I however accept the position that the appellant is not an occupancy raiyat with the result that a mortgage by her would not come within the terms of the section.

2. In reply Mr. Sen Gupta has contended that, though the original mortgagor must be an occupancy raiyat, the application under Sub-section 5 may be made by any successor in interest to the original mortgagor irrespective of whether he himself is an occupancy raiyat or not. It has been held that the term "mortgagor" in the section includes his successors in interest. I can find nothing in the wording of Sub-section (5) to suggest that, when the actual mortgagor is an occupancy raiyat, the right to make an application to restore to possession is confined to such of his successors in interest as may happen themselves to be occupancy raiyats. As it is not disputed that the original mortgagor is an occupancy raiyat. I am of the opinion that the appellant was entitled to make the application. The appeal is allowed, the Order of the learned Subordinate Judge is set aside and that of the Munsif is restored. I make no Order as to costs.