

(1912) 04 CAL CK 0015
In the Calcutta High Court

Banamali Chowdhury

APPELLANT

Vs

Ram Kinkar and Others

RESPONDENT

Date of Decision : 11-04-1912

Acts Referred:

Bengal Tenancy Act, 1885 — Section 178

Citation : 15 Ind. Cas. 575

Hon'ble Judges : Mookerjee, J;Carnduff, J

Bench : Division Bench

Judgement

1. This is an appeal on behalf of the plaintiff in an action to eject the defendants who hold under a lease, dated the 31st May 1886. That lease, on the face of it, embodies a permanent settlement for agricultural purposes, and the defendants have been in occupation of the disputed land thereunder from the date of the settlement up to the present time. The plaintiff, however, contends that he is entitled to eject the defendants by virtue of the following clause in the lease: "Be it further -stated that if I myself take up cultivation in future, that is, after twelve years, then you shall give up the said land to my cultivation." The question, therefore, arises whether this condition is operative in law. In support of the view that it entitles the landlord legally to terminate the tenancy at any time after the expiry of twelve years from the commencement of the lease, reliance has been placed upon the decision of the Judicial Committee in Bhagwan Sahai v. Bhagwan Din 12 A. 387 : 17 I.A. 98. But it is clear that the decision is of no assistance to the appellant. In that case, there was a conveyance with a clause for re-purchase within the term of ten years. No question, therefore, obviously arose as to the validity of the covenant. It does not follow, however, that a covenant for re-purchase at a period of time which may be indefinitely postponed, is valid in law. In fact, the decision of Sir George Jessel, M R in London and South Western Railway Co. v. Gomm 20 Ch. D. 562 : 48 L.T. 449 : 30 W.R. 620 : 51 L.J.Ch. 530, shows that a covenant of this description may be bad on the ground of remoteness. This view accords with the principle recognised in Gosavi v. Rivett-Carnac 13 B. 463 and Ray v. Walker (1892) 2 Q.B. 88 : 61 L.J.Q.B. 718. It is

further plain that the clause upon which the learned Vakil for the" appellant relies is bad, because it contravenes the provisions of Section 178 of the Bengal Tenancy Act. That section provides in Clauses (a) and (c) of Sub-section (1) that nothing in any contract between a landlord and a tenant, made before or after the passing of the Act, shall bar in perpetuity the acquisition of an occupancy-right in land or shall entitle the landlord to eject a tenant otherwise than in accordance with the provisions of the Act. The effect of the clause in substance is to reduce the defendants to the level of tenants-at-will after they have been in possession for more than twelve years and have acquired a right of occupancy in accordance with the statutory provisions on the subject. The appellant, therefore, invites us to support a clause in the lease, which is inconsistent with the interest created in the lessee, is bad for remoteness, and tends to bar the acquisition of a right of occupancy. The validity of a clause of this character cannot possibly be maintained.

2. The result is that the decree of the Subordinate Judge is affirmed and this appeal dismissed with costs.