

(1896) 08 CAL CK 0005
In the Calcutta High Court

Bansi Das alias Raghu Nath Das and Another	APPELLANT
Vs	
Jagdip Narain Chowdhry and Others	RESPONDENT

Date of Decision : 13-08-1896

Acts Referred:

Bengal Tenancy Act, 1885 — Section 50

Citation : (1897) ILR (Cal) 152

Hon'ble Judges : Trevelyan, J;Beverley, J

Bench : Division Bench

Judgement

Trevelyan and Beverley, JJ.—In this case the plaintiffs alleged that the defendants had purchased 10 bighas out of a holding of 32 bighas odd, which was the kasht land of Achhey Lal Jha and Rati Lal Jha. They claimed that the holding could not be alienated or sub-divided without their consent as landlords, and they accordingly prayed for a declaration that the defendants' purchase was illegal and invalid, and that inasmuch as the 10 bighas had been abandoned by the original tenants, khas possession of this land might be given to the plaintiffs.

2. The Jha tenants were not made parties to the suit.

3. The suit has been dismissed by the lower Courts on two grounds: In the first place it is found that the holding in question was transferable by law, and in the second place that, although the sub-division of the tenancy, having been made without the landlord's written consent, was not binding upon him (section 88, Bengal Tenancy Act), still such alienation of a part of the tenure did not work a forfeiture: Kabil Sardar v. Chander Nath Nag Chowdhry ILR 20 Cal. 590. In this latter finding we think the lower Courts were right, and the plaintiff's were therefore not entitled to a decree for possession, but we think the suit should not have been dismissed in toto. The very finding to which we have referred entitled the plaintiffs to the declaration which they asked for, that the alienation to the defendant was not binding upon them, In this view it was immaterial whether or not the entire holding was transferable. Moreover, in coming to the conclusion that it was so transferable, we are of opinion that both the lower Courts have

fallen into an error of law in applying the presumption created by Section 50 of the Act to convert an occupancy raiyat into a raiyat holding at fixed rates. As we pointed out in a recent case, the class of "raiyaats holding at fixed rates". is specially defined by Section 4 of the Act as meaning "raiyaats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity;" in other words, the rent or rate of rent must be fixed in perpetuity at the commencement of the tenancy. We entertain grave doubts whether this class of raiyat can be created by the operation of Section 50. All that that section says is that a raiyat who has held at the same rent or rate of rent since the time of the Permanent Settlement shall not be liable to have his rent increased except on the ground of an alteration in the area of the holding, it does not say that such a raiyat is a raiyat holding at fixed rates, or that the tenancy shall be subject to the incidents of a holding at fixed rates as prescribed by Section 18 of the Act. In this respect, therefore, we think that the judgments of the lower Courts are wrong.

4. On the findings we are of opinion that the plaintiffs are entitled to a declaration that the alienation to the defendant is not binding upon them, and we accordingly allow the appeal, set aside the decrees of the lower Courts, and substitute there for a declaratory decree as stated above. And we think that the plaintiffs are entitled to their costs in all Courts.