

(1920) 05 CAL CK 0055
In the Calcutta High Court

Binayak Das Acharja Chowdhury and Others

APPELLANT

Vs

Saminuddi alias Saki Matbar and Others

RESPONDENT

Date of Decision : 06-05-1920

Acts Referred:

Bengal Tenancy Act, 1885 — Section 3(9)

Citation : 59 Ind. Cas. 209

Hon'ble Judges : Panton, J;Newbould, J

Bench : Division Bench

Judgement

1. These eight appeals arise out of eight suits for enhancement of rent u/s 30 of the Bengal Tenancy Act.

2. The suits have been dismissed by both the lower Courts on the ground that the interest of the tenant in the land in respect of which enhancement is claimed are not holdings as defined by Section 3 Clause (9) of the Bengal Tenancy Act. The suits have been dismissed solely on this ground and other suits brought by the same landlord and heard together on the same evidence were decreed in part.

3. The nature of the tenancies found is as follows:

4. The Settlement Khatians show that the defendant's tenancies comprise undivided parcels of homestead land forming parts of agricultural holdings. A statement has been given to us, which is not disputed, showing that the lands held by the defendants in undivided shares form part of each tenancy and each of the defendants holds as part of his tenancy a separate parcel of agricultural land. There is abundant authority to support the views of the lower Courts that Section 30 does not apply when the tenancy of a raiyat is an undivided share of land and that a parcel or parcels of land in Clause (9) Section 3 of the Bengal Tenancy Act mean an entire parcel or entire parcels of land and that, therefore, an undivided share of land comprised in a tenancy is not a "holding." It is unnecessary to give a list of the many rulings on this point. Several of them will

be found collected in what we are told is the most recent decision. It is one of the Patna High Court cases,--see Harnandan Rai y. Kesho Prasad Singh 40 Ind. Cas. [585 : 2 P.L.J. 553 : 1 P.L.W. 738. In that case the facts were similar to those of the present case, (sic) was there a separate tenancy in each case consisting of a specific area of land held together with undivided share in certain other areas of land.

5. On behalf of the appellant, the main principle laid down by these decisions is not disputed. It is contended that they can be distinguished on the ground that in these cases it was a co-sharer landlord who had let out his undivided share in a separate tenancy.

6. It seems to us that it is immaterial how the tenancy was created. The case turns on the meaning of the word "holding." If the tenancy is a holding, Section 30 is applicable. If the tenancy is not a holding, the section is not applicable. Obviously, the case of a tenant holding an undivided share in a parcel of land would most frequently arise when a lease is granted by a landlord owning an undivided share. But the law remains the same whether the undivided interest is created by a landlord holding a fractional interest, or by a landlord holding the whole of the interest, or where, as in the present case, the original tenancy has not been proved and is merely based on the result of "Settlement proceedings under the Bengal Tenancy Act. If in one of the several parcels of land held by a raiyat and forming the subject of a single tenancy, the raiyat has an undivided share, that tenancy, according to the decisions of this Court, cannot be a holding. It is immaterial whether the parcel held jointly with others is a small or large portion of land of the tenancy. It is sufficient that within the tenancy there is some land which is not held entirely by the raiyat. Also the provisions of Section 182 make it immaterial that the undivided parcel which is part of the tenancy is Lomestead land and not agricultural land. It is also suggested before us that this interpretation of the definition of a holding in Clause (9) of Section 3 is repugnant in the subject or context and that, therefore, the preamble of Section 3 excludes this interpretation. That argument was adduced before the Patna High Court in the case referred to above and we agree that it is not possible to say, in the present case, that there is any repugnancy in the subject or context in Section 30.

7. It is also said that all the cases cited relate to the sub-division of a whole holding. But this is not so as we have already stated when referring to the Patna case: there also there was a specific area of land held together with undivided shares in certain other areas of land.

8. We, therefore, hold that the decision of the lower Appellate Court is right and these appeals are dismissed. The respondents, who have appeared, will get their costs.