

(1909) 03 CAL CK 0058
In the Calcutta High Court

Bipin Behari Hati

APPELLANT

Vs

Amrita Lal Bhattacharji

RESPONDENT

Date of Decision : 11-03-1909

Acts Referred:

Bengal Tenancy Act, 1885 — Section 85(3)

Citation : 3 Ind. Cas. 685

Hon'ble Judges : Francis Maclean, C.J.;Doss, J

Bench : Division Bench

Judgement

Francis Maclean, C.J. 1. The question which arises on this appeal is a very short one and one of "law" and it is as to the apportionment of part of certain compensation money paid under the Land Acquisition Act as between the tenant of the land and his sub-tenant. We are not concerned with the rights of the zemindar. The zemindar has received a six-anna share of the compensation money and he is satisfied, and we have nothing to do with him. The question, as I have said, arises between the tenant and his subtenant as to the division of the remaining ten anna share of the compensation money.

2. The short facts are these:-It appears that one Kishory Lal was an occupancy tenant of the land which was taken. He on the 1st of September 1884, granted a permanent lease of this land at a fixed rent of Rs 58 per annum, to the predecessors-in-title of the, Present appellants. That was a permanent lease. Prima facie in that state of circumstances the tenant would be entitled to the capitalized value at so many years' purchase of the rent actually reserved by the permanent lease, with if it were assessable, any sum that might be added for the chance of the reversion falling in. But as has been pointed out in previous cases, it is difficult to place any money value on that chance and there has been no attempt to do so on the present occasion. If the matter stood there as between the tenant and his sub-tenant the tenant would be entitled to the capitalized value of the rent and the sub-tenant to the rest. But having regard to Section 85 Sub-section (3) of the

Bengal Tenancy Act which provides that "where a raiyat has without the consent of his landlord granted a sub lease by an instrument registered before the commencement of this Act, the sub-lease shall: not be valid for more than nine years from the commencement of this Act, the lease here was granted before the Bengal Tenant Act came into operation,--the tenant contends that inasmuch as he could not grant a sub-lease for more than 9 years, the interest of the present appellant, the sub-tenant, has determined and he, the tenant, is entitled to the whole of the remaining compensation money. That practically (subject to a refund to the sub-tenant of what he paid as salami for the permanent lease) is the view taken by the lower Court. The sub-tenant has appealed and contends that the compensation money as between himself and his lessor ought to be apportioned by capitalizing at so many years" purchase the rent payable under the lease to the tenant and paying that sum to the tenant and the rest to himself. The question really turns upon the true construction of Sub-section (3) of Section 85 of the Bengal Tenancy Act. I do not go into the question of whether the tenant is not estopped from challenging the validity of his own lease, as, on the merits, I think, the contention of the appellant must prevail.

3. I think the words in Sub-section (3) a sub-lease shall not be valid for more than nine years from the commencement of the Act "apply only as between the sub-tenant and the landlord. The object of the section is to restrict the right of subletting as against the landlord: to protect the landlord against subletting. This view gains support from the words "without the consent of the landlord" in Sub-section 3 and valid" as against the landlord "in Sub-section 1. The point is not free from authority. The matter has twice been before this Court. Once in the case of Gopal Mondal v. Eshan Chunder Banerjee 29 C. 148 and again in the case of Madan Chandra Kapali v. Jaki Karikar 6 C.W.N. 377 and in both those cases the above view was taken.

4. I, therefore, think that the appeal must be allowed, and that the tenant respondent is only entitled to so much of the compensation money as represents the capitalized value of the rent actually reserved by the permanent lease, at so many years" purchase. The parties consent that this should be taken at 25 years" purchase, which is a liberal estimate. The rest of the compensation money will go to the appellant, the sub-tenant, and he must have the costs of this appeal, hearing fee, four gold mohurs.

Doss, J. 5. I agree.