

(1914) 03 CAL CK 0022
In the Calcutta High Court
Case No : L.P. App. No. 64 of 1913

Bisheshur Ray Chowdry

APPELLANT

Vs

Rajendra Kumar Singh

RESPONDENT

Date of Decision : 25-03-1914

Acts Referred:

Citation : (1914) 03 CAL CK 0022

Judgement

Jenkins, C.J.—In our opinion the judgment of Mr. Justice Newbould as also the decree of the lower Appellate Court must be set aside for these reasons. We are satisfied that the Appellant, who is the Defendant in the suit, is a tenure-holder, and that he and his predecessors-in-interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit. From that it follows that, until the contrary is shown, the tenure-holder and his predecessors-in-interest have held at that rent or rate of rent from the time of the Permanent Settlement ; and, if that be so, then sub-sec. (1) of sec. 50 of the Bengal Tenancy Act protects the Defendant from an increase of rent except on the ground of an alteration in the area of the tenure. The only question, therefore, is whether the contrary has been shown. For that purpose reliance has been placed on the kabuliyat, dated the 13th Pous 1238, one of the exhibits in the case. The true meaning of this document has been the subject of considerable discussion before us, but this at least emerges clearly from the discussion that the document is the recognition of a previously existing interest and not the creation of a new one. Therefore it does not show the contrary required by sub sec. (2) of sec. 50. The result then is that in so far as the lower Appellate Court has decided in favour of an enhancement of rent, the decree was erroneous. In so far as it decided that there had been no alteration in area, it must be upheld as it is a finding of fact which has not been controverted. The Plaintiff's suit must, therefore, be dismissed.

2. Each party will bear his own costs throughout.