

(1906) 05 CAL CK 0024

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 501 of 1905

Debendra Nath Bhowmik and Others Principal

APPELLANT

Vs

Syama Prosanna Bhowmik and others

RESPONDENT

Date of Decision : 28-05-1906

Acts Referred:

Citation : (1906) 05 CAL CK 0024

Final Decision : Dismissed

Judgement

Rampini, J.—The only question raised in this appeal is as to the sufficiency of the notice to quit served upon the Defendants. The subject of dispute is non-agricultural land to which the provisions of the Transfer of Property Act apply. The term of the notice to quit according to the British Calendar falls short of six months by four days. It was a notice to quit at the end of the year. It appears to me to be a sufficient notice to quit. The Defendant holds no written or registered lease. The land is let for other than agricultural or manufacturing purposes. Hence under sec. 107 of the Transfer of Property Act, the Defendants has only a monthly tenancy of the land terminable by a 15 days" notice.

2. The pleader for the Appellant contends that the tenancy was created before the passing of the Transfer of Property Act and consequently is not regulated by its provisions. No such plea was ever taken in either of the Courts below. There was no pleading to this effect, no issue on this point, and not a trace of it in either of the Courts" judgments. But if this be so, the notice is sufficient, for according to the Bengali Calendar the notice is a six months" notice. The provisions of cl. 33, sec. 3 of the General Clauses Act will not apply in that case for there is thus no question of the interpretation of the terms of any Act.

3. I would therefore dismiss this appeal with costs.

Woodroffe, J.

4. I think that if the Transfer of Property Act does not apply to the case it must as pointed on in Hari Das Tanti v. Upendra Narain Shaha 10 C.W.N. cxxviii (1906)

be decided according to the rule of justice, equity and good conscience and that if the tenancy is regulated by the Bengali year notice may be given according to the Bengali Calendar. In such a case the only point to be determined is what is reasonable notice and in the present case, as in that cited, six months calculated according to the Bengali Calendar is a reasonable notice assuming which it is unnecessary to decide that the Defendant is entitled to as much. Then assuming that this case is governed by the Transfer of Property Act I should like to notice the argument that because an annual rent was mentioned the tenancy must be taken to be a yearly one. The lease was not for agricultural or manufacturing purposes and therefore must, in the absence of a contract to the contrary, be deemed to be a tenancy from month to month. It is said here that there was such a contract, for a yearly tenancy is to be implied from the mention of an annual rent. But when sec. 106 speaks of a contract I think it means a valid contract. But in the present case there is no such contract and under sec. 107 a lease such as is argued for in this appeal can only be created by a registered instrument and there is none here. The notice was therefore sufficient so far as the tenancy is concerned. No other question as regards the notice was argued. I agree, therefore, that this appeal should be dismissed with costs.