

(1919) 01 CAL CK 0018
In the Calcutta High Court

Dinesh Chandra Das on his Death his Heirs Suresh Chandra Das and Others APPELLANT

Vs

Brajendra Kishore Ray Chowdhury RESPONDENT

Date of Decision : 23-01-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 29

Citation : 50 Ind. Cas. 370

Hon'ble Judges : Shamsul Huda, J;Richardson, J

Bench : Division Bench

Judgement

1. Upon the terms of the kabuliyat of the 3rd Falgun 1311 B.S., it is quite clear that the rent of the defendants' old holding was thereby enhanced from Rs. 31 to Rs. 57-13-0. That is an enhancement of more than two annas in the rupee and the kabuliyat so far as it relates to the old holding is, therefore, void under the provisions of Section 29 of the Bengal Tenancy Act.

2. The learned Subordinate Judge in the lower Appellate Court seems to have thought that because the original rent of the old holding was fixed before the Tenancy Act came into force, Section 29 has no application to the kabuliyat now in question which was executed after the Act came into force. That view has not been supported before us and is obviously incorrect. In the case of Tejendro Narain Singh v. Bakai Singh 22 C. 658 : 11 Ind. Dec.(N.S.) 439, to which the Subordinate Judge refers, the increased rent was payable under a kabuliyat executed before the Act came into force.

2. It is true that the kabuliyat relates not only to the old holding but also to a new holding which it creates. The area of the new holding is only six cottahs and the rent is Rs. 1-8-0 a year. It is suggested that the kabuliyat consolidates the holdings and the rents payable therefor. But if the document be read as a whole, it is clear that it does no such thing. No doubt a total of the two rents is given but the rents still remain separate rents for separate holdings. No such question arises, therefore, as that which was considered in the case of Raj Kumar Sarkar

v. Faizudii Tarafdar 30 Ind. Cas. 283 : 22 C.L.J. 81.

3. The result is that the appeal must be allowed. The decree of the Subordinate Judge is set aside and the decree of the Munsif restored. The defendants are entitled to their costs in this Court and the Courts below.