

(1913) 05 CAL CK 0006

In the Calcutta High Court

Case No : Appeal From Appellate Decree No. 1682 of 1910

Doyamayee Chowdhurani and Others

APPELLANT

Vs

Narendra Kishore Roy and Others

RESPONDENT

Date of Decision : 06-05-1913

Acts Referred:

Citation : (1913) 05 CAL CK 0006

Judgement

1. This appeal arises out of a suit for khas possession brought by an auction-purchaser at a revenue sale. It is now admitted that the land which is the subject of the suit formerly appertained to taluk Rahamat Rafi which was in existence at the time of the permanent settlement. From Exhibit B it appears that in the year 1222 (B.S.) this taluk was divided into two. A new taluk called Radha Benode was created and the other portion of the taluk was still called Rahamat Rafi. The rent of the old taluk was proportionately assessed on these two taluks. The land in this suit appertains to the portion that was allotted to taluk Radha Benode. The Court of first instance held that this taluk existed from the time of the permanent settlement and dismissed the Plaintiff's suit for khas possession on the ground that the Defendants were protected by the provisions of sec. 37 of Act XI of 1859. On appeal the learned Subordinate Judge held that the taluk Radha Benode must be held not to have been in existence before the division of the old taluk in 1222, and as it was not in existence from the time of the permanent settlement, the Plaintiff was entitled to khas possession. The lower Appellate Court therefore decreed the suit. On behalf of the Appellants the case of Nobendra Kishore Boy v. Durga Charan Chowdhury 16 C.W.N. 515 (1910) has been cited. The facts of that case closely resemble the facts of the present case. It was there held that when a portion of a taluk existing from, before the permanent settlement was transferred and the said portion was subsequently held in proportionate jama under a name different from the original taluk, but the subsequent transfer and descent thereof can be traced from the original taluk, the portion so transferred is also protected under sec. 37 of Act XI of 1859. That ruling in our opinion is binding on us as regards the decision of the

present case.

2. For the Respondents it is contended that the finding of the learned Subordinate Judge is a finding of fact with which we cannot interfere in second appeal. We are unable to accept this contention. As has been pointed out in the case of *Mullick Chand Das v. Satish Chandra Das* 11 C.L.J. 56 (1909) , what the effect of the division of a taluk is must depend upon the intention of the parties. Had the learned Subordinate Judge come to a finding that the intention of the parties in 1222 was that the division of the old taluk changed the incidents of the tenure, we should be bound by such a finding. But as he has come to no finding as to the intention of the parties, we are not unable in second appeal to form our own conclusion, and the conclusion we arrive at is that judging from the circumstances of the case there was no intention to alter the condition of the tenure.

3. We accordingly decree this appeal and reverse the finding and decree of the lower Appellate Court and restore those of the Court of first instance. The Appellants are entitled to their costs in all Courts.