

(1916) 05 CAL CK 0003
In the Calcutta High Court

Dwarkanath Chowdhury and Others

APPELLANT

Vs

Tafazar Rahaman Sarkar and Others

RESPONDENT

Date of Decision : 23-05-1916

Acts Referred:

Bengal Tenancy Act, 1885 — Section 45

Citation : 39 Ind. Cas. 64

Hon'ble Judges : John Woodroffe, J;Chaudhuri, J

Bench : Division Bench

Judgement

John Woodroffe, J.—The District Judge allowed the plaintiff's claim. On appeal to this Court Mr. Justice Newbould held that the suit was barred by limitation under the provisions of Clause 1(a), Schedule III, of the Bengal Tenancy Act It has been found as a fact that the defendants were not in possession of the land before they enter it under their lease for five years and that the land in suit is khas khamar land of the plaintiffs. We must accept this finding and dispose of this appeal accordingly.

2. The question then is, do the defendants come within the term "non-occupancy raiyat" as mentioned in the Schedule. It is admitted that if the defendants are non-occupancy raiyats, then the suit is barred. If this portion of the Schedule does not apply then the general law of limitation does and the suit is not barred. The contention that has been urged before us may be summarised thus:

3. For the respondents it is contended that by the term "non-occupancy raiyat" in the Schedule is meant any person who is a tenant who has not acquired or cannot acquire occupancy rights and that as the defendants have been in possession of khas lands and could not acquire occupancy rights, they must be taken to be non-occupancy raiyats within the meaning of that Article and accordingly the six months law of limitation applies.

4. On the other hand on behalf of the appellants it is contended that a person in the position of the defendants in occupancy of khas lands does not come

within this Article of the Schedule and the learned Vakil relies upon the fact that section 45 of the Bengal Tenancy Act from which the present portion of the Schedule is taken was originally in that portion of the Tenancy Act which deals with non occupancy raiyats and it is admitted that if the section had been left where it originally was then Section 45 would not have applied to the case before us. But it is contended that by its transfer to the Schedule it is given a wider application, which on the other hand is denied. Reliance also is placed on the amendment of the heading under Chapter XI of the Bengal Tenancy Act. In that heading it has been inserted non-accrual of occupancy and non-occupancy rights." I think we may look at this heading for the purpose of interpreting, the section mentioned above, and on this it is contended on behalf of the appellants that the defendants holding khamar lands are not included in the term "non-occupancy. raiyat" within the Schedule. I think that this argument has force and I hold that the suit is accordingly not barred.

5. The decree of Mr. Justice Newbould must, therefore, be reversed and that of the District Judge restored.

6. The appellants are entitled to their costs in this appeal and in the appeal before Mr. Justice Newbould.

Chaudhuri, J.

7. I agree.