

(1946) 01 CAL CK 0028
In the Calcutta High Court
Case No : Appeal No. 345 of 1943

Girindra Nath Bose and others

APPELLANT

Vs

Surendra Nath Biswas and others

RESPONDENT

Date of Decision : 21-01-1946

Acts Referred:

Citation : (1946) 01 CAL CK 0028

Final Decision : Dismissed

Judgement

Henderson, J.—This appeal is by the decree-holders and raises a point under S. 168A, Bengal Tenancy Act. The suit was one for assessment of fair rent. It is common ground that nothing was being paid. A decree was passed in favour of the appellants by which a certain sum was awarded to them for use and occupation of the land for a certain period anterior to the institution of the suit. The decree conforms with that which is usually made in cases of this kind. In execution the appellants are seeking to bring to sale property other than the holding. The respondents then raised the present objection under S. 168A, Bengal Tenancy Act, which has been allowed by the lower appellate Court. The answer of the appellants is that the decree in question, is not one for arrears of rent within the meaning of that section. Mr. Janah suggested that the decree was one for damages for use and occupation of the land by a trespasser. This is nothing but an attempt to make out an absolutely new case. Such a suit would have been brought in the Small Cause Court and no attempt would have been made to execute the decree under the special procedure prescribed by the Bengal Tenancy Act. The suit was, in fact, instituted on the footing that the relationship of landlord and tenant exists between the parties. As the learned Subordinate Judge rightly appreciated, the determination of the point in dispute depends upon whether the sum awarded to the appellants is "rent" within the definition in S. 3 (13), Bengal Tenancy Act, which is in these terms: "'rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use and occupation of the land held by the tenant."

2. Mr. Lahiri contended that the use of the word "Khajna" in the decree shows that the Court decreed the suit as an ordinary rent suit and inasmuch as the appellants did not take proper steps to put it right, it is not open to them to raise this present point now. There is no substance in this contention. This word must be read in connection with the rest of the document. Furthermore, the matter will depend not on the use of any particular Bengali word in the decree but on the true nature of the claim and decree. None of the cases cited by Mr. Janah is an authority for the proposition which he is seeking to establish. On the other hand, if the proposition is Bound, a decree of this nature should be executed under the CPC instead of under the Bengal Tenancy Act. In practice this is never done; even the appellants themselves have not done it in this case. It being common ground that the relationship of land-lord and tenant exists, I can see no escape from the conclusion that the sum decreed is lawfully payable by the respondents for their use and occupation of the land held by them as tenants. Mr. Janah argued that, when the suit was filed, there was nothing lawfully payable as there was no contract or decree. That of course is perfectly true. But it is not open to the decree-holders to argue that money, which they are levying in execution, is not lawfully payable. The appeal is dismissed. I make no order as to costs. The appellants may amend their petition within one month of the arrival of the records in the Munsiff's Court.