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**(1910) 04 CAL CK 0029**  
**In the Calcutta High Court**

Golab Misser

APPELLANT

Vs

Kumar Kalanand Singh and Another

RESPONDENT

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**Date of Decision :** 15-04-1910

**Acts Referred:**

**Citation :** 6 Ind. Cas. 217

**Hon'ble Judges :** Sharf-ud-din, J; Brett, J

**Bench :** Division Bench

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### Judgement

1. These three appeals arise out of three suits brought by the plaintiffs-appellants to have it declared that their status as tenants was that of occupancy raiyats holding at fixed rents. In the record-of-rights which has been prepared in respect of their Tillage, they had been entered as tenure-holders without fixity of rents under the defendants.

2. In support of their claims in the three suits, plaintiffs filed a number of rent receipts and adduced oral evidence. The defendant adduced no evidence.,

3. The Court of first instance found that the plaintiffs had proved by satisfactory evidence that the holding in the first suit had been held at an uniform rent since 1879, that the second holding had been similarly held since 1847 and the third since 1853. Fixity of rent having been proved in the case of each holding for upwards of 20 years, the Subordinate Judge held that the presumption u/s 50 of the Bengal Tenancy Act would arise and that each must be considered as held at a rent fixed in perpetuity. He accordingly decreed all the three suits.

4. On appeal the District Judge has reversed the judgment and decrees of the Subordinate Judge and has dismissed all the three suits holding, on the authority of decisions of their Court in the cases of Taran Krishna Bhonmic v. Robert Watson & Co. 10 C.W.N. 67 and Sarat Chandra Ghose v. Shyam Chand Sinha 10 C.W.N. 930, that as the suits were not brought under the provisions of the Bengal Tenancy Act, the presumption u/s 50 of that Act could not be held to have arisen.

5. Plaintiffs have appealed, and in support of the appeal it has been argued that the lower appellate Court erred in law in holding that the decision of the Court of first instance was based wholly on the presumption arising u/s 50 of the Bengal Tenancy Act. There was evidence to prove that the rent had all along been paid at a fixed sum yearly and it was contended that, even if the provisions of Section 50 of the Bengal Tenancy Act could not be taken to apply directly, still the Court was justified in accepting the principle laid down in that section as a useful guide in determining whether or not the holdings were at rents fixed in perpetuity, *Nunda Lal Gossami v. Atarmoni Dassi* 12 C.W.N. 432 : 35 C. 763.

6. In our opinion the decision of the District Judge on this point cannot be maintained. The only question raised was whether the holdings were at rents fixed in perpetuity or not. The plaintiffs proved that the holdings had been held at the same rents for periods of 27, 60 and 57 years respectively. There was no evidence to prove that any different rents had ever been realized. On this evidence, apart from any presumption u/s 50 of the Bengal Tenancy Act, we are of opinion that the Court of first instance was justified in holding that the status of the plaintiffs was that of occupancy raiyats holding at rents fixed in perpetuity. We hold, therefore, that on this ground the judgment and decrees of the lower appellate Court should be set aside.

7. On behalf of the respondents, however, a point has been taken which was never raised in either of the lower Courts, namely, that these suits for declaratory decrees were not maintainable by the plaintiff as he had failed at the time of the preparation of the record-of-rights to avail himself of the special procedure provided by Section 106 of the Bengal Tenancy Act for the amendment of the entities relating to the holdings in the record of rights. In support of this contention the decision of this Court in the case of *Jogendra Nath Roy v. Krishna Pramada Dasee* 35 C. 1013 : C.W.N. 1032 : 8 C.L.J. 322 is relied on. We may observe that the decision referred to is opposed to the view taken by this Court in the cases of *Ramgulam Singh v. Vishnu Pargash Narain Singh* 11 C.W.N. 48 and *Troylokhya Nath Bose v. M.N. Macleod* 28 C. 28.

8. Had the decision of these suits in the lower Courts turned on this point, we should have felt constrained to refer these cases to a Full Bench. We are unable to accept the view taken in the case of *Jogendra Nath Roy v. Krishna Pramada Dasee* 35 C. 1013 : C.W.N. 1032 : 8 C.L.J. 322 that the failure of a person to institute a case u/s 106 of the Bengal Tenancy Act for the purpose of correcting an entry in a record-of-rights debars him from bringing a regular suit to establish his rights. If no case has been brought and decided under that section, the entry in the record of rights at most is presumed to be correct but the presumption is rebuttable and the entry does not amount to a final adjudication of the rights of the parties. This indeed is a view taken by this Court in the other decisions to which we have referred. In fact the decision relied on by the appellants does not appear to have been followed.

9. In the present appeals the point is raised in this Court only and as we hold

that there is no substance in it and as the decisions of the lower Courts do not rest on it, we see no reason to do more than to hold that the point fails.

10. The three appeals are, therefore, decreed with costs: the judgment and decrees of the lower appellate Court are set aside and those of the Court of the first instance restored. The appellants are entitled to their costs from the respondents in all of the Courts.