

(1924) 02 CAL CK 0050
In the Calcutta High Court

Gour Krishna Sarkar and Another

APPELLANT

Vs

Nilmadhab Saha and Others

RESPONDENT

Date of Decision : 19-02-1924

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 50, 50(2)

Citation : AIR 1925 Cal 498

Judgement

1. The question raised in this appeal is whether on the facts found the presumption u/s 50, Bengal Tenancy Act, ought to be raised in favour of the appellants, The appellants are the tenants. The landlords opposite party brought A suit u/s 105, Bangal Tenancy Act, for enhancement of the rent of the holding in possession of the appellants. It was found by the Court of first instance that the status of the appellants was that of tenure-holders, that the holding was divided into two equal halves between the heirs of the original tenure-holder, that the rant paid in respect of each half was proportionate and that the rent had been V uniform for more than 20 years. On these (findings it was held that the presumption u/s 50 ought to be raised in favour of the tenants that the tenancy existed from the time of the Permanent Settlement and the rent of it is not liable to enhancement. There were several other cases tried along with the present case and they were similarly decided. On appeal the learned Special Judge held that as the original tenure was divided it amounted to creation of new tenancies at the time of the division. As the creation of the new tenancies took place after the Permanent Settlement, the presumption u/s 50 ought not to apply to the present case. There were several appeals against this judgment by several tenants affected by it. All these, including the appeal by the present appellants, came up for hearing before a Bench of this Court consisting of Mookerjee and Rankin, JJ. It was held by the learned Judges that the sub-division of a tenure does not operate as a breach of the continuity of the tenure: if the different parts into which the tenure is divided are hold at a proportionate rent and the aggregate rent equals the original Iron, the tenure-holder is entitled to the benefit of the presumption u/s 50, Clause (2), Bangal Tenancy Act.

2. The appeal by the present appellant, however, could not be proceeded with because a formal defect was discovered which necessitated the dismissal of the appeal. It appears that before the filing of the appeal to this Court the appellants had submitted an application for review before the learned Special Judge. That review was partially granted and the judgment and decree previously passed by the learned Judge were modified. It was, therefore, held that the appeal by the present appellants was incompetent inasmuch as the decree from which that appeal was preferred was subsequently vacated and a new decree substituted in its place. The decision of this Court in this matter is to be found in *Hara Kumar Mitter Vs. Murari Mohan Bose and Others*, . The appellants, therefore, preferred another appeal (which is the present appeal) against the decree as made after review. The same question is raised in the present appeal as was raised in the appeal to which we have referred and the decision of which is to be found in *Krishna Kamini Dasi and Another Vs. Nil Madhab Saha and Others*, . The point which has been raised in this appeal has been set at rest by the decision referred to above. But it is urged by the learned vakil who appears on behalf of the minors that this decision being in direct conflict with the decision in the case of *Uday Chandra Kharji v. Nripendro Narayan Bhup* (1909) 36 Cal. 287, the question should be referred to a Full Bench for considering how the later case has been dealt with since the decision was pronounced. We do not think that the course suggested is necessary. The decision in the case of *Uday Chandra Kharji v. Nripendro Narayan Bhup* (1909) 36 Cal. 287 has never been followed. An attempt was made to distinguish it in all subsequent cases until we come to the case of *Chandra Kanta v. Ram Krishna* (1916) 24 C.L.J. 275 when its correctness was doubted; and in the case of *Krishna Kamini Dasi and Another Vs. Nil Madhab Saha and Others*, it has been expressly dissented from. One ground for questioning the correctness of this decision is that it has not taken note of the state of the law previous to the passing of the Bengal Tenancy Act and the argument that as that law was in conformity with the view taken in the case of *Krishna Kamini Dasi and Another Vs. Nil Madhab Saha and Others*, and as it was not expressly abrogated by the Legislature must be taken to be unaffected by the (Bengal Tenancy Act. The omission to take note of the pre-existing law has very much weakened the authority of *Uday Chandra Kharji v. Nripendro Narayan Bhup* (1909) 36 Cal. 287. We think that the case was not correctly decided and we prefer to follow the decision in *Krishna Kamini Dasi and Another Vs. Nil Madhab Saha and Others*, .

3. We are further asked by the learned vakil for the respondent to send this case back to the Special Judge for trial of the question as to whether the landlords have been able successfully to rebut the presumption u/s 50, Bengal Tenancy Act. We find that the only ground raised in order to meet the contention of the tenants that they were entitled to the benefit of the presumption u/s 50, Bengal Tenancy Act, was that the tenancy was sub-divided after the Permanent Settlement and, therefore, the presumption under that section could not arise. No other ground was raised and we do not think that any useful purpose will be

served by sending the case back to the lower Appellate Court.

4. The result is that this appeal is allowed the decree of the lower Appellate Court set aside and that of the Settlement Officer restored with costs. The appellants are entitled to their costs in this Court as also in the Court of appeal below. They are also entitled to their costs of the review application before the learned Special Judge. We assess the hearing-fee in this Court at one gold mohur.