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**(1910) 08 CAL CK 0019**  
**In the Calcutta High Court**

Harendra Nath Mukherjee

APPELLANT

Vs

Abinash Chandra Banerjee

RESPONDENT

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**Date of Decision :** 08-08-1910

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 15, 16, 17

**Citation :** 7 Ind. Cas. 761

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

**Bench :** Division Bench

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**Judgement**

1. The question of law which arises for consideration in this Rule relates to the true construction of Section 17 read with Sections 15 and 16 of the Bengal Tenancy Act and their applicability to cases in which an estate has been placed in charge of a Receiver appointed by a Court of competent jurisdiction. One Debendra Nath Mukerjee died intestate on the 16th July 1907. Shortly after his death, on the 9th December 1907, a suit was commenced by his eldest son for partition of the family properties. On the 4th December 1908, the plaintiff in that suit was appointed Receiver of the subject-matter of litigation. He then brought a suit against the defendants in the case now before us for recovery of arrears of rent due from them in respect of the years 1312 to 1315. The defendants resisted the claim on various grounds amongst which it is necessary to mention only one for our present purposes. They contended that as the Receiver had not registered his name u/s 17 of the Bengal Tenancy Act read with Sections 15 and 16, he was not entitled to recover the rent claimed. The learned District Judge has held that in so far as the rents of 1312 and 1313 are concerned as they accrued due before the death of Debendra Nath, the Receiver is entitled to realize them upon the authority of the decision of this Court in the case of Belchambers v. Nawab Syed Ilussan Ali 2 C.W.N. 493. But in respect of the rents which have accrued due after the death of Debendra Nath the learned Judge has held that the suit was not maintainable inasmuch as the requirements of Section 16 of the Bengal Tenancy Act had not been fulfilled. In our opinion, this view is clearly erroneous and cannot be supported. Section 16 provides that a person

becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure until the Collector has received the notice, fees and costs referred to in Section 15. The question that arises upon this section is whether the Receiver is a person who has become entitled to a permanent tenure by succession. The answer must obviously be in the negative. The Receiver has not become entitled to the tenure by succession or otherwise. As a result of the controversy between the persons who claim to have become entitled to the estate by succession, a litigation has followed in the course of which the Court has taken charge of the estate and placed it in the custody of the Receiver as its officer. As such officer of the Court, the Receiver is entitled to collect rent from the tenants; but it cannot be suggested that the Receiver has become entitled to the tenure by succession. No doubt, the learned District Judge observes that not only the Receiver but the heirs of Debendra Nath have not fulfilled the requirements of Section 16; but this, in our opinion, is immaterial. The heirs of Debendra Nath, who have not complied with the requirements of Section 15, might have found themselves in inextricable difficulty if they had commenced a suit for rent, because in so far as they were concerned, the view might have been maintained that as they had become entitled to the tenure by succession, they could not recover rent by suit before they had complied with the requirements of Section 16. But in the events which have happened, it is not they but the Receiver who brings this suit for recovery of rent and the terms of Section 16 are undoubtedly not comprehensive enough to bar an action by the Receiver. In support of this view, reference may be made to the case of Harihar Mukerjee v. Harendra Nath Mukerjee 6 Ind. Cas. 416 : 12 C.L.J. 252, in which it was ruled with regard to this very estate that a Receiver was not a person who had succeeded to the estate of the deceased so as to render it obligatory upon him to take out succession certificate in order to enable him to recover sums due to the estate. A similar principle obviously applies to the case before us. If the contrary view were maintained, collection of rent might obviously be suspended the event of dispute between two claimants as to who was really entitled to take the estate of the deceased; the Receiver, as we have held, could not pay the fees under the terms of Sections 15, 16 and 17, and even if both the claimants paid the fees, neither could sue for rent, so long as the Receiver was in possession. We are not prepared to adopt a construction of the sections which would lead to a result of this character.

2. The result, therefore, is that this rule is made absolute and the decree of the District Judge varied. The suit will stand decreed in full with costs throughout. We assess the hearing fee in this Court at one gold mohur.