

(1946) 06 CAL CK 0031
In the Calcutta High Court

Hem Prova Debi

APPELLANT

Vs

Sarat Chandra Basu and Others

RESPONDENT

Date of Decision : 26-06-1946

Acts Referred:

Bengal Tenancy Act, 1885 — Section 160(c)

Citation : AIR 1947 Cal 269

Hon'ble Judges : Edgley, J

Bench : Division Bench

Judgement

Edgley, J.—In the suit out of which this appeal arises the plaintiff sued for a declaration of her title and for khas possession in respect of some land appertaining to a tenancy which she purchased at a civil Court sale in 1932. Defendants 2 to 7 claimed to be under-raiyats while; defendant 1 is a sub-tenant holding under defendants 2 to 7. Their contention was that their interest in the disputed land constituted a protected interest u/s 160, Clause (c), Ben. Ten. Act, which could not be annulled u/s 159 of the Act. They maintained that they had erected permanent dwelling houses on this land and had also planted gardens thereon of a permanent character.

2. The trial Court held that defendants 2 to 7 had permanent dwelling houses on the land and that their interest was therefore protected as regards these houses. The learned Munsif held, however, that there was no permanent garden and as the lease could not be split up for the purpose of eviction he dismissed the plaintiff's suit.

3. The case came before the learned District Judge on appeal on 25-3-1942. The learned Judge disagreed with the trial Court with regard to the character of the dwelling houses which had been erected on the disputed land; and his judgment contains a finding of fact to the effect that the houses standing on the disputed land are mud walled thatched huts which are by no means permanent buildings or structures. He accordingly held that the defendants cannot claim protection on that account. With regard to the gardens however he held that the evidence

indicated that the gardens on the disputed land were of a permanent character; and this finding must be regarded as a finding of fact.

4. The main point which has been urged by the learned Advocate for the appellant in this case is that having regard to the findings mentioned above the plaintiff's suit should not have been dismissed in its entirety, and that the plaintiff at any rate should have been allowed khas possession in respect of that portion of the disputed land on which the dwelling houses of the defendants had been erected. We are of the opinion that there is considerable force in this contention and we have been referred to a number of cases in connection with which a similar question arose in regard to Section 37(4), Bengal Land Revenue Sales Act of 1859. The leading case on the point seems to be that in *Jogendra Narain Roy Chowdhury Vs. Kiran Chandra Roy*, , Roy in which it was pointed out that the benefit of Exception 4 to Section 37 of the Act, should be limited only to such portions of the land as are covered by buildings, tanks, etc., and cannot be extended to cover those lands included in the lease on which no permanent works had been constructed. The language of Exception 4 to Section 37, Bengal Land Revenue Sales Act, is very similar to that of Section 160(c), Ben. Ten. Act, and we are of opinion that in these circumstances" we should apply the principle laid down in the above cited case.

5. It is, however, argued on behalf of the respondents in this appeal that the finding of the learned District Judge with regard to the houses of the defendants cannot be justified having regard to the language of Section 160(c), Ben. Ten. Act. The learned" Advocate contends that the expression "dwelling houses" merely means a dwelling house in which the tenant has some permanent sort of residence and does not refer to the permanent nature of the structure itself. "We are not prepared to accept this view having regard to the use of the words "other permanent buildings" to which the learned Judge has referred in his judgment, and we are in agreement with the view taken by Biswas J. in his judgment in *Khateruddin and Others Vs. Tripura Sundari Debi Bhattacharjee*, . In that case the learned Judge followed an earlier decision in *Makar Ali v. Shyama Charan Das* ("99) 3 C.W.N. 212 and stated with reference to Clause (c) of Section 160, Ben. Ten. Act, that

the words used are "dwelling-houses, manufactories or other permanent buildings." The words "other permanent buildings" clearly indicate that the structures referred to in the preceding part of the clause must also be permanent in character, otherwise, there would be no point in using the word "other".

6. In view of what has been stated above the judgment of the learned District Judge must be modified. The plaintiff's title will be declared in respect of the land in suit, but she will not be allowed khas possession in respect of that portion of the disputed land on which the gardens have been planted. She will, however, be allowed khas possession in respect of the portion of the land on which the mud walled thatched huts belongs to the defendants have been constructed.

7. The parties will bear their own costs throughout.