

(1888) 07 CAL CK 0002
In the Calcutta High Court

Hira Lal Das for Self and as Executor for his Minor Brother,
Kanai Lal Das

APPELLANT

Vs

Mothura Mohun Roy Chowdhry and Others

RESPONDENT

Date of Decision : 09-07-1888

Acts Referred:

Bengal Tenancy Act, 1885 — Section 53

Citation : (1888) ILR (Cal) 714

Hon'ble Judges : Pigot, J;Gordon, J

Bench : Division Bench

Judgement

Pigot, J.—We think the judgment of the Subordinate Judge must be set aside and the appeal allowed. The Subordinate Judge treats the decision between the parties in the former suit, whereby an annual kist was decreed, as conclusive evidence of agreement or established usage between the parties. We think he has made two mistakes. That decree is not any evidence whatever of agreement between the parties. There was a dispute between them as to the time at which the rent was payable, and a decree was made in accordance with the law existing at the time ordering payment of rent yearly. This negatives, so far as it has any effect, such inference as might be drawn as to the existence of an agreement from the fact of yearly payments, as it explains them. Secondly, the Subordinate Judge refers to established usage between the parties, plainly treating that within the scope of Section 53 and using the words "between the parties" as if they were in Section 53. That might be an useful addition to the Act, but the words are not there, and the words " established usage" in that section refer not to a practice previously prevailing between the parties, but to the established usage of the pergunnah in which the property is situate. The decree of the lower appellate Court is set aside and that of the Munsif restored with costs throughout. This decision will apply to appeals Nos. 2257 and 2258 of 1887.