

(1917) 02 CAL CK 0020
In the Calcutta High Court

Iswar Chandra Dey and Others

APPELLANT

Vs

Murari Lal Dutt and Others

RESPONDENT

Date of Decision : 01-02-1917

Acts Referred:

Bengal Tenancy Act, 1885 — Section 182

Citation : 41 Ind. Cas. 472

Hon'ble Judges : John Woodroffe, J;Beachcroft, J

Bench : Division Bench

Judgement

John Woodroffe, J.—This is a dispute over a email piece of land which is said to be about 45 feet square and is valued at Rs. 3. The suit is an action in ejectment and both the Courts have found in favour of the plaintiffs. A large number of defences of varying character have been taken, which have all been decided against the present appellants.

2. Before us the main point which has been argued is this: It has been found as a fact that the husband of the appellants' vendor died in the year 1897 or 1898 : that he was in possession of an agricultural jote. It is found that his widow inherited this property and actually paid rent to the landlord for this jote for a period of two years. Then, in 1898 to 1899 she appears to have built herself a homestead, and according to the finding of the first Court, which has been confirmed in appeal by the lower Appellate Court, she used this homestead as her own dwelling and lived there. This homestead, therefore, was acquired at a time when according to the finding of the Court she was a raiyat.

3. It has been contended, therefore, that in the absence of any special custom or usage which has not been proved, Section 182 of the Bengal Tenancy Act applies and that she must be taken to be a raiyat as regards this homestead. The lower Appellate Court finds her to be a non-occupancy raiyat and that as such she had no right to transfer the land to the appellants, no custom having been proved which would entitle her to do so. Therefore, no title passed to the appellant.

4. The main argument has been that, even accepting these facts, they are not sufficient to bring the case within the provisions of the Bengal Tenancy Act, because it has not been shown that she was holding and inhabiting this homestead for agricultural purposes, or, in other words, that the homestead land was held ancillary to an agricultural purpose, in which case only it is contended that Section 182 of the Bengal Tenancy Act would apply. I do not find in the numerous arguments addressed to the lower Court any reference to this particular point; but it would seem to me to be concluded by the findings of fact which we do find in the judgment, and to follow as a natural inference from these facts; and these facts are, as I have said, that the appellants' vendor's husband did possess this agricultural jote and she herself paid the rent for these two years and the allegation of abandonment has been held to be not proved. It is true that there is a finding in the judgment of the first Court that the appellants' vendor worked for sometime as a maidservant. That, however, would not in itself stand in the way of the fact that the homestead might also be held in connection with the agricultural land. Through a servant she might be cultivating lands; nor is the fact of payment of rent by the nephews sufficient. The lower Appellate Court in its judgment says this: "it is not in evidence under what arrangement they, that is, the vendor's nephews have been paying rent. Certainly the landlord did not enter upon the holding or let it out to another tenant. It might be that the Baishnabi made some arrangement under which they (the nephews) have been paying rent."

5. Under these circumstances I think that the concurrent findings in the judgments of the Courts below must be affirmed.

6. This appeal is therefore dismissed with costs.

Beachcroft, J.

7. I agree.