
(1915) 04 CAL CK 0002
In the Calcutta High Court

Jadab Chandra Sardar and Another

APPELLANT

Vs

Govinda Chandra Mandal and Others

RESPONDENT

Date of Decision : 30-04-1915

Acts Referred:

Bengal Tenancy Act, 1885 — Section 49, 87

Citation : 29 Ind. Cas. 466

Hon'ble Judges : Fletcher, J

Bench : Single Bench

Judgement

Fletcher, J.—This is an appeal by the defendants Nos. 1 and 2 from a decision of the learned District Judge of 24-Pergannahs dated the 23rd January 1913, affirming the decision of the Munsif of the second Court of Basirhat. The suit was brought by the plaintiffs for ejectment. The defendants Nos. 1 and 2 were under-raiyats under the defendant No. 4. Then the defendant No. 4 transferred his occupancy right to the first three defendants. After that transfer, the landlord settled the land with the present plaintiffs. The plaintiffs then sued to recover possession of the land. The under-raiyats raised many defences, but it has been found by the learned Judge of the lower Appellate Court that the interest that the defendant No. 4 had was that of an occupancy raiyat and that there is no custom of transfer. Therefore, when the fourth defendant transferred the property to the other three defendants, the landlord had a right to re-tenter upon the property. But it is said that the defendants Nos. 1 and 2, who were originally under-raiyats, are entitled to a notice u/s 49 of the Bengal Tenancy Act. u/s 49 an under-raiyat is not liable to be ejected by his landlord, except when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord. That does not apply to a superior landlord who is claiming to re-enter because the occupancy raiyat has forfeited his holding by having transferred it without the consent of the landlord. Section 49 applies where the occupancy raiyat still remains in the position of the landlord, not where the occupancy raiyat has forfeited his interest by having transferred his interest without the consent of the

landlord.

2. Then another point has been made that, in this case, the landlord could only re-enter after a notice served u/s 87 of the Bengal Tenancy Act. The decisions of this Court are clear and conclusive that that is not so. Those decisions have been acted upon and recognised and this point about Section 87 clearly has got no substance in it. I agree with the conclusion arrived at by the learned Judge of the lower Appellate Court. The present appeal, therefore, fails and must be dismissed with costs.