

(1925) 01 CAL CK 0048
In the Calcutta High Court

Jnanendra Nath Singha Roy

APPELLANT

Vs

Rakhyakali Debi

RESPONDENT

Date of Decision : 15-01-1925

Acts Referred:

Citation : AIR 1925 Cal 1245 : 87 Ind. Cas. 986

Judgement

1. This is an appeal by the plaintiff in a rent suit against a decision of the District Judge of Nadia confirming a decision of the Munsif of Ranaghat. The landlord sued for rent for the years 1324 to 1326 and the defence was that the tenancy was a permanent one; and, secondly, that the tenancy had been transferred to one Lolit, who had been subsequently recognized by the landlord as his tenant. The first Court accepted the contentions of the defence and held that the tenancy was a permanent one and that Lolit had been recognized, and in the result dismissed the suit for rent. The lower appellate Court held that the transfer had not been established inasmuch as the deed which purported to transfer the tenancy had not been proved and that it was not established that the, tenancy was a permanent one, and the learned Judge went on to find that by virtue of certain dakhilas it was established that the landlord had recognized Lolit as his tenant. In the circumstances, be agreed with the conclusion of the first Court and dismissed the suit.

2. It is urged before us, firstly, that the dakhilas do not establish the recognition of Lolit; and, secondly, that the defendant's case, having been based on a deed of gift to Lolit, he cannot rely on the rent receipts as an answer to the landlord's claim. It appears that the dakhilas which were produced cover the period from 1318 to 1323. The rent receipts for the years 1321 to 1322, while showing the tenancy as standing in the name of one Pran Hari Banerji, show in addition Lolit as sarbarahakar. The other receipts, that is, those for the years 1318 to 1323, show Baranashi, the husband of the defendant, as a tenant, and Lolit as being the person at present in possession. As has been pointed out in the case of Probbabati Dasi v. Taibaturinessa Chaudhurani 17 C. W.N. 1088, the Court cannot hereby look at words like " sarbarahakar" and similar words, but has to

consider whether in fact there has been a recognition. It seems to us that on the facts of the case, and as shown by the dakhilas, there was in the present) case a recognition by the landlord of Lolit as his tenant. The first point, accordingly, fails.

3. So far as the second point is concerned we do not see why, even if the defendant's case based on the deed of gift failed, she should not rely, as she has done, on the dakhilas.

4. The result is that we think that the judgments of both the Courts below are correct and that this appeal must be dismissed.