
(1926) 03 CAL CK 0051
In the Calcutta High Court

Kailash Chandra Gantail

APPELLANT

Vs

Meheruddi Sheikh and Another

RESPONDENT

Date of Decision : 12-03-1926

Acts Referred:

Bengal Tenancy Act, 1885 — Section 158

Citation : AIR 1927 Cal 51 : 97 Ind. Cas. 604

Hon'ble Judges : Ghose, J;Cuming, J

Bench : Full Bench

Judgement

Cuming, J.—This appeal arisen out of an application by a tenant u/s 158 of the Bengal Tenancy Act asking the Court to determine the area of his tenancy. The landlord raised a number of objections among others that the application was not maintainable inasmuch as the relationship of landlord and tenant did not exist between the parties. The trial Court held that the area of the tenancy amounted only to some 14 bighas in the place of 18 bighas as mentioned in the defendant's pattah and to this extent he allowed the application. On appeal this finding of the Munsif was affirmed and the appeal was dismissed.

2. The landlord has appealed to this Court and his contention is that the Court had no jurisdiction to determine the area of the tenancy, because he had raised the defence that the relationship of landlord and tenant did not exist between him and the respondent. He contends that since it is contended that the relationship of land lord and tenant does not exist between the parties it is not open to the Court, to go into the matter any further or to determine whether the relationship of landlord and tenant does exist between the parties and after he has determined that it does not exist then to proceed to dispose of the application.

3. In support of his contention Mr. Maity has referred us to the case of Peary Mohun Muherji v. Ali Sheikh [1893] 20 Cal. 249. It cannot, however, be said that this decision is an authority for the proposition Mr. Maity has contended for. All that this case would seem to decide is that a decision as to whether the

relationship of landlord and tenant did or did not exist between the parties in a proceeding u/s 158 of the Bengal Tenancy Act would not be res judicata in a subsequent regular suit. This is not the same as holding that a Court could not in an application u/s 158 determine whether the relationship of landlord and tenant did or did not exist between the parties. Looking at the wording of the section itself it would seem clear that it is open in such proceeding to determine whether the relationship of landlord and tenant exists between the parties. Sub-clause (1) (b) sets forth among other matters that may be determined by the Court the name and description of the tenant thereon. This sub-clause, therefore, would go to show that the Court has to determine whether the relationship of landlord and tenant exists between the parties. For obviously if the Court can determine the name and description of the tenant it can determine whether the relationship of landlord and tenant does exist between the particular parties. I am, therefore, of opinion that Mr. Maity's contention has no substance.

4. The appeal must, therefore, fail and is dismissed with costs. Hearing-fee one gold mohur.

Ghose, J.

5. I agree.