

(1918) 08 CAL CK 0012
In the Calcutta High Court

Kali Kishore Das

APPELLANT

Vs

Gopal Ram Saha

RESPONDENT

Date of Decision : 01-08-1918

Acts Referred:

Citation : 49 Ind. Cas. 766

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

Bench : Division Bench

Judgement

1. In this case it appears that in execution of a decree for rent the landlord decree-holder proposes to eject the tenant under the provisions of Section 52 of the Bengal Act VIII of 1869.
2. To avoid the ejectment a 3rd person claiming to be a transferee from the tenant seeks to make the deposit provided for by the section cited, and to this end the learned Subordinate Judge of Sylhet has directed the Court of first instance to inquire into the applicant's status.
3. It is against this order that the present Rule is directed.
4. In making his order the Subordinate Judge relies on the decision reported as Sarodapersad Roy Chowdhry v. Nobichand Butt Marsh. 417 : 2 Hay 527 and there is a similar decision in 2 Hay 527. But in these reports the facts are not fully stated, and possibly they are cases of transferable holdings or tenures, In the present case it is not disputed that the holding is not transferable.
5. But it appears that the applicant claims to be the transferee of a portion only, and not, as was supposed when the Rule was issued, the transferee of the whole.
6. Having regard to the cases cited above and also to the principles laid down in the Full Bench case of Dayamoyee v. Ananda Mohan Roy 27 Ind. Cas. 61 : 42 C. 172 : 18 C.W.N. 971 : 20 C.L.J. 52, this Rule, we are of opinion, should be discharged. It will accordingly be discharged with costs, one gold mohur.