
(1927) 06 CAL CK 0037
In the Calcutta High Court

Khemadananda Kumar

APPELLANT

Vs

Rashamya Haldar

RESPONDENT

Date of Decision : 22-06-1927

Acts Referred:

Bengal Tenancy Act, 1885 — Section 49

Citation : AIR 1928 Cal 388

Hon'ble Judges : Rankin, C.J;Costello, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this case a suit in ejectment was brought against the defendant alleging that he was an under-raiyat and that notice had been given u/s 49, Ben. Ten. Act. The defendant, by his written statement, claimed to be an occupancy-raiyat, and, having: claimed to be an occupancy, raiyat he contends that by Section 111, Ben. Ten. Act, the proceedings against him should in effect be stayed until three months after" the final publication of the record of rights.

2. The Court below has refused this contention and said that the suit is one for recovery of khas possession and Section 111 does not apply to the case.

3. I am of opinion that the Court below is right in the view is has taken of Section 111. I do not think that it can be imputed to the section as to its meaning that in any case, in which the defendant chooses to raise a question as to status, the landlords is presented from taking action under the ordinary law in such matters.

4. We have been referred, to, a judgment in Kanak Kanti Roy Chowdhury Vs. Srishtidar Mondal and Another, . There are certain passages is that judgment which give colour to the contention of the present petitioner, but, upon a careful consideration of Section 111 and its real meaning, I am not of opinion that it can be laid down that in any case where the defendant chooses to raise a question of status the plaintiffs are rendered powerless so far as the civil Court as concerned.

5. The rule is discharged with costs, the hearing-fee being assessed at one gold

mohour.

Costello, J.

6. I agree. I only desire to add that in my opinion the point raised is amply covered by a decision of Mitra, J., in *Nasarulla Mia v. Amiruddi* [1906] 3 C.L.J. 133 (134). In that case the suit was one for rent and the defendant pleaded non-liability denying the relationship of landlord and tenant. He claimed the status of a jotedar or occupancy raiyat and put forward the record of rights and settlement rent roll published on 20th October 1900 as a bar to the plaintiff's claim. The plaintiff's contention was that neither Section 105-H nor Section 111-A, Ben. Ten. Act, applied to the facts of that case. The learned Judge in his judgment said: We think this contention is sound and the appeal must be allowed." There is also a similar decision in the same volume: see *Rajaram Singh v. Sheo Pershad Roy* [1906] 3 C.L.J. 63n. of the Calcutta Law Journal at p. 63 of the Notes portion at the end of the volume.