

(1913) 07 CAL CK 0020
In the Calcutta High Court

Khitish Chukder Roy and Others

APPELLANT

Vs

Bhikan Mamud Pramanik and Others

RESPONDENT

Date of Decision : 08-07-1913

Acts Referred:

Citation : 25 Ind. Cas. 530

Hon'ble Judges : Lawrence Jenkins, C.J.; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is a suit to recover possession of land. The plaintiffs based their title on a lease, creating a term for one hundred and five years, running from 1862 to 1967. If they acquired the rights created by that lease, then unquestionably, they are entitled to succeed in this suit. They are resisted by the reversioner on the lease who claims that the interest under the lease was neither heritable nor transferable. The case came before this Court and was heard by Mr. Justice Sarada Charan Mittra sitting singly. He remanded the case for the determination of the question as to the interpretation of the document in the light of the conduct of the parties, and in this he seems to have had in view the interpretation of the document in relation to heritability as also transferability. So far as the heritability is concerned, I think there was no necessity to send back the case, for it has been decided by the Privy Council in *Maharaja Tej Chand Bahadur v. Sri Kanth Ghose* 3 M.I.A. 261 : 6 W.R. (P.C.) 48 : 1 Suth. P.C.J. 152 : 1 Sar. P.C. 27 : 18 E.R. 497 that where, as here, there is a definite term, it is heritable.

2. The only question then is whether it is transferable. The lease was apparently granted for general purposes and for a term of no less than 105 years. These facts might perhaps be considered as themselves sufficient to show that the interest was assignable, as was the view of Sir Barnes Peacock in *Banee Madhab Banerjee v. Joy Kishen Mookerjee* 7 B.L.R. 152 : 12 W.R. 495., where the circumstances were somewhat similar to the present. But over and above that, we have here the fact that the Subordinate Judge has held that the conduct of

the parties points to its having been regarded on both sides as transferable and treated as such. It seems to me, therefore, that the plaintiffs have made out their case, and are entitled to a decree for possession. This has been awarded to them by the Subordinate Judge, and we must, therefore, dismiss the appeal, and agree with Mr. Justice Coxe in confirming the decree of the lower Appellate Court.

3. The appellant must pay the costs of this appeal.