

(1918) 04 CAL CK 0042
In the Calcutta High Court

Maharajah Bahadur Sir Prodyot Kumar Tagore	APPELLANT
Vs	
Bhuban Moyee Dasya and Another	RESPONDENT

Date of Decision : 08-04-1918

Acts Referred:

Bengal Tenancy Act, 1885 — Section 106

Citation : AIR 1919 Cal 1072(1) : 46 Ind. Cas. 1

Hon'ble Judges : Shamsul Huda, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—These appeals are preferred by the plaintiff against the decisions of the learned Special Judge of Mymensingh, dated the 12th February 1916, affirming the decision of the Assistant Settlement Officer of the same place. The appeals arise out of certain proceedings instituted under the provisions of Section 106 of the Bengal Tenancy Act. The defendants have been entered on the record as permanent tenure-holders. The plaintiff objects to the entry so made and brought the suits to amend the record by striking out the word permanent. The question is "are tenants permanent tenure-holders?" The facts as found are these: First of all, the defendants have been holding under the terms of certain dowl kabuliyats, these dowl kabuliyats going back to the year 1270. The defendants or, rather, the persons through whom they claim were tenants prior to 1270. But when the tenancy was created or what was the period of the tenancy earlier than 1270, is not capable of being ascertained. That is the finding of fact made by the lower Appellate Court. If once one comes to the conclusion that the tenancy that existed before 1270 cannot be ascertained--it may be a yearly tenancy, may be a tenancy for four years or may be for any other term--then one has got to look at the dowl kabuliyats; and, under the terms of the dowl kabuliyats, there is no doubt that the interest that the tenants took was not that of a permanent tenure-holder. This case is not distinguishable, in my opinion, from the decision of this Court reported as Prodyot Coomar Tagore v. Krishnamoni Dasya 40 Ind. Cas. 513 : 21 C.W.N. 809, nor do I think that it is distinguishable from the other group of appeals, namely, Second Appeals Nos.

1040, 1104 to 1109 of 1916 in which we have delivered judgment this morning. These appeals are, therefore, allowed. The Record-of Rights must be amended by omitting therefrom the word permanent as describing the interest that the defendants hold. Let the condition in the dowl kabuliyats, as has been entered in the record in Second Appeals Nos. 1040, 1104 to 1109 of 1916, be also entered in the record with reference to these cases. We make no order as to the costs in these appeals.

Shamsul Huda, J.

2. I agree.