

(1919) 06 CAL CK 0046
In the Calcutta High Court

Manmohan Singha Roy and Others

APPELLANT

Vs

Bbnode Behari Dubey and Others

RESPONDENT

Date of Decision : 20-06-1919

Acts Referred:

Citation : 53 Ind. Cas. 248

Hon'ble Judges : Newbould, J

Bench : Single Bench

Judgement

Newbould, J.—This is an appeal against an order holding that the appellants' suit was not maintainable. The plaintiffs as proprietors of 8 annas share of a superior interest in certain land sued the defendants originally for ejectment, but finally amended" their plaint so that the suit was one in which the only relief claimed was an assessment of fair and equitable rent. The plaintiffs" co sharers were joined as co defendants and the allegation was that the principal defendant was a holder of a service tenure, that he discontinued to serve the plaintiffs and that, therefore, he was liable to pay rent for the land of his holding. Both the lower Courts have relied en the decision of this Court in the case of Gholam Mohiuddin Hossein v. Khairan 31 C. 786; C. W. N. 325. I am unable to see how the facts of this case can be distinguished from the facts of that case. There it was held, firstly, that the co-sharer landlord was not competent to obtain a partial ejectment of the tenants to the extent of his share on the allegation of facts similar to those made in the present case. On that ground the appeal was dismissed. But it was further remarked that in the case of a service tenure created by all the co-sharers in a Zemindari, not governed by the provisions of the Bengal Tenancy Act, a co-sharer landlord is not competent to sue the tenants for fair and equitable rent payable in respect of his share for failure of service originally performed. Though the appeal was not decided on the basis of that finding, I can see no reason for differing from that decision and it is sufficient for the determination of this appeal. My attention has been drawn to several ruling", in which it has been held that a right to assess rent is not a right under the Bengal Tenancy Act but a right under the general law, and it was so held in the

decision to which I have referred.

2. The appeal fails and is dismissed with costs.