

(1919) 02 CAL CK 0003
In the Calcutta High Court

Mohendra Nath Mozumdar

APPELLANT

Vs

Nagendra Narain Roy Chowdhury

RESPONDENT

Date of Decision : 20-02-1919

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : 50 Ind. Cas. 918

Hon'ble Judges : Ernest Fletcher, J;Beachcroft, J

Bench : Division Bench

Judgement

Ernest Fletcher, J.—This appeal is preferred by the defendant against the decision of the learned District Judge of Khulna, dated the 10th August 1916, reversing the decision of the Munsif of Bagirhat. The plaintiff brought the suit to recover possession of certain land which had been let out by a lease to the defendant. The first Court dismissed the suit altogether. The second Court, that is, the lower Appellate Court, held, first of all, that, as regards a particular matter on which it had been alleged that there had been a forfeiture of the tenancy, although there had been a forfeiture, there had been a waiver and, secondly, that the tenancy had been duly determined by a six months' notice. The only point raised in this appeal is whether lawfully this tenancy could be determined by a notice. The lease is in writing and, under the provisions of Section 106 of the Transfer of Property Act, subject to contract or custom, the lease would be one from month to month terminable on fifteen days' notice. It is said, however, that in this case the contract, provides that the tenancy should be a yearly one. Only one thing that can suggest that is that the rent is payable annually and it is said that the authorities, show that that is sufficient to show that the tenancy is from year to year. I do not think so. There is no case which shows that the mere fact that the rent is payable in one sum yearly--especially when the rent is so small as the sum of Rs. 100 is sufficient to make the tenancy a tenancy from year to year. As to authority, the observations of Woodroffe, J., in the case of Debendra Nath Bhowmik v. Syama Prosanna Bhowmik 11 C.W.N. 1124 are clearly opposed to the view put forward by the appellant. The learned

Judge was of opinion that the mere fact that an annual rent was mentioned was not sufficient to make the tenancy a yearly one. That being so, the present appeal fails and must be dismissed with costs.

Beachcroft, J.

2. I agree.