

(1887) 05 CAL CK 0013
In the Calcutta High Court

Moheshwar Pershad Narain Singh

APPELLANT

Vs

Sheobaran Mahto and Dursun Raut and Others

RESPONDENT

Date of Decision : 25-05-1887

Acts Referred:

Bengal Tenancy Act, 1885 — Section 178

Citation : (1887) ILR (Cal) 621

Hon'ble Judges : Tottenham, J; Norris, J

Bench : Division Bench

Judgement

1. These three appeals arise out of suits to eject the defendants upon the ground that the period of their holding had expired. The plaintiff's case was based upon an alleged solenamah or agreement entered into between the plaintiff on the one hand and several ryots on the other in previous suits. The previous suits were for arrears of rent, and a dispute arose as to the amount of the jumma. In those suits a petition was put in by the plaintiff on the one band, and it is said that there was a corresponding petition on the other side, agreeing to a particular rate of rent; and agreeing between the parties that the ryots should hold a certain specified area for a term of five years at a given jumma. The term having expired the plaintiff sued to eject. In the first ease before us, namely, appeal from appellate decree No. 2138 of 1886, the defendant in the lower Court admitted that he executed this solentemah ; and we think that as he did so it is now impossible for him to escape the effect of it. The lower Courts gave him the benefit of Section 178 of the Bengal Tenancy Act, which provides that "nothing in any contract between a landlord and a tenant made before or after the passing of this Act shall take away occupancy right in existence at the date of the contract." The Court considered that, as regards a certain portion of the land in question, these defendants had acquired occupancy rights before the alleged solenamah was executed. We think, however that in this suit, which commenced before the new Tenancy Act came into force, the tenant cannot get the benefit of Section 178. We think that the point to be looked to was, what was the right of the tenant at the time that the suit was brought. At the time the suit was brought

there was nothing to prevent his contracting himself out of his rights. That being so we think that in the appeal from appellate decree No. 2138 of 1886 the plaintiff is entitled to succeed. That appeal therefore will be allowed with costs in all the Courts.

2. But as regards the other two appeals, Nos. 2139 and 2140 of 1886 the defendants in the lower Courts repudiated the alleged solenamah and denied having been parties to it. And the Courts found as a fact that they were not parties.

3. For the appellant it was contended that the solenamah had been confirmed by a decree. A copy of the judgment in the case in which the solenamah was filed has been put in, but no copy of the decree is produced. We think therefore that the lower appellate Court was justified in holding upon the evidence that the defendants in these two cases were not parties to the solenamah; and when it was found that they had rights of occupancy, certainly in respect of some portion of their holding, the Court below was right in dismissing the suit to eject them.

4. These two appeals are dismissed with costs.