
(1918) 03 CAL CK 0025
In the Calcutta High Court

Mohim Chandra Pal and Others

APPELLANT

Vs

Maharaja Sir Pradyat Kumar Tagore and Another

RESPONDENT

Date of Decision : 20-03-1918

Acts Referred:

Citation : 45 Ind. Cas. 651

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

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal by the defendants against the decision of the learned Special Judge of Mymensingh, dated the 22nd May 1915, reversing the decision of the Assistant Settlement Officer of the same place. The proceedings out of which this appeal arises were instituted under the provisions of Section 106 of the Bengal Tenancy Act. In the Record of Rights finally published u/s 103B of the same Act, there was an entry that the defendants held a permanent tenure subject only to the liability to have the rent enhanced. Therefore, the plaintiffs instituted the present suit under the provisions of Section 106. The Srst Court dismissed the suit, holding that the tenure was permanent, not subject to enhancement of rent. On appeal, the learned Special Judge has reversed that finding. The way that the learned Judge bases his judgment is this. First of all, the learned Judge holds that, apart from certain Dowl Kabuliyats, the evidence does not establish that the defendants have a permanent interest. If that is the correct view, of course, there is nothing to say. Secondly, the learned Judge holds that, if the Dowl is to be the document for consideration apart from the other evidence; then the Dowl itself shows quite clearly that the tenure is not a permanent one. I think that the learned Judge is right on the terms of the Dowl. The last clause in the document, entitling the landlord to take possession in the event of the parties not being able to arrive at a new rate of rent after the expiration of the temporary term covered by the Dowl Kabuliyat, is absolutely inconsistent with the fact that the tenant has a permanent interest. No person having a permanent interest would contract that, if he and his landlord cannot agree as to what is to be the rate of the rent after the term for which the rent is

settled with the landlord, he would forfeit his permanent interest in the land. Further, the Dowl Kabuliyat in the present case is substantially in the same terms as the Dowl Kabuliyat in the case that was heard by another Division Bench of this Court between the same landlord and another tenant, namely, the case of Prodyot Coomar Tagore v. Krishnamoni Dasya 40 Ind. Cas. 513 : 21 C.W.N. 809, where it was held that the Dowl Kabuliyat did not confer a permanent and heritable interest on the tenant. I think the conclusion arrived at by the learned Special Judge in the present case is correct. The present appeal, therefore, fails and must be dismissed with costs.

Shamsul Huda, J.

2. I agree.