
(1920) 01 CAL CK 0007
In the Calcutta High Court

Monmohan Ghose

APPELLANT

Vs

Narain Chandra Das and Others

RESPONDENT

Date of Decision : 22-01-1920

Acts Referred:

Bengal Tenancy Act, 1885 — Section 158

Citation : 55 Ind. Cas. 709

Hon'ble Judges : Walmsley, J

Bench : Single Bench

Judgement

Walmsley, J.—This appeal arises out of an application made by the appellant as landlord u/s 158, Bengal Tenancy Act. The facts are all stated in the judgments of the lower Courts.

2. Two points are raised in this appeal. The first is that there ought to have been an enquiry regarding the other parcels of land which the defendant admitted that he possessed, although he said that he held them under a debutter title. The second point is that the Courts below should have come to a finding as to whether the tenant was entitled or not to the benefit of the presumption u/s 50, Bengal Tenancy Act.

3. As regards the first point, the Courts below held that the landlord was so negligent that he was not entitled to have any more land measured. It appears that a commission was issued to the Revenue Officer in September 1917. That officer went to the village on the 5th December. The Amin visited the village in January and the Revenue Officer went again in February to check the Amin's measurement. On the occasion of the Deputy Collector's first visit, no one appeared at all on behalf of the landlord. When the Amin went, some land was shown by the landlord and the Amin measured all that was shown to him. Then after the completion of the measurement, the Deputy Collector ordered the parties to appear before him with their evidence on the 3rd April. On that date the petitioner produced no document; and it was then that the respondent said that he had other lands in his possession situate within the villages, but that he

held them under an independent title. After that the landlord made his application that those other lands should be measured. On the facts which I have stated I think it must be held that the landlord was so negligent that he was not entitled to have the enquiry reopened on that day. Another objection is that the scope of Section 158, Bengal Tenancy Act, is very limited. The section says that the landlord of the land may apply for the determination of the following matters; viz., the situation of the land and so forth. The underlying principle of the section is that there should be an admitted tenancy; but when the landlord wanted to have these additional lands measured, he was making an application regarding lands about which the tenant respondent said that the petitioner landlord was not the landlord, I think, therefore, that the enquiry could not be made within the scope of Section 158, Bengal Tenancy Act.

4. Then to turn to the second point, the lower Court has recorded the interest of the respondent as being that of an occupancy raiyat. The prayer made by the landlord was that there should be a further enquiry whether the tenant was entitled to the benefit of the rule contained in Section 50. It appears to me that the Courts below were right in rejecting it. Section 50 lays down a rule of evidence which is ordinarily applied when the landlord seeks enhancement of rent. In the present case the judgments of the Courts below left the question open whether or not the tenant is entitled to the benefit of that rule. Reading Clause (c) of Section 158, Bengal Tenancy Act, I have no doubt that they were right in doing so.

5. On these grounds I dismiss the appeal with costs. I assess the hearing fee at two gold mohurs.