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**(1949) 09 CAL CK 0015**  
**In the Calcutta High Court**  
**Case No : Civil Rule No. 574 of 1949**

National Investment Co. Ltd.

APPELLANT

Vs

Mohendra Nath Kundu and Others

RESPONDENT

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**Date of Decision :** 20-09-1949

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 26F, 88

**Citation :** AIR 1950 Cal 163

**Hon'ble Judges :** Guha, J; Das Gupta, J

**Bench :** Division Bench

**Advocate :** Atul Ch. Gupta and N.C. Chakaravarty, for the Appellant; Hiralal Chakravarty and Shyamadas Bhattacharjee, for the Respondent

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## Judgement

Das Gupta, J.—Section 26 (F), Bengal Tenancy Act, as enacted by the amending Act of 1928, gave the immediate landlord of a holding a right of pre-emption, in the case of a transfer of the holding by the tenant, with a few exceptions. When the Act was further amended the right of the pre-emption was taken away from landlords and given to co sharer tenants. In the present case, the facts are that when a co sharer tenant transferred his interest, in (sic) the opposite parties as landlords exercised their right of pre-emption, and obtained an order by which the interest of the co sharer tenants stood transferred to them. The other co sharer tenant has since transferred his interest to the petitioner, but the opposite parties have no longer any right of pre-emption as "landlords," since the law has changed. They claim, however, to have become cosharers of the tenancy as a result of the transfer to them of a cosharer's interest under the old Section 26F, and so, to be entitled to exercise the right of pre-emption which the new section gives to co sharer tenants.

2. The Court below accepted this contention of the opposite parties and allowed the application for pre-emption.

3. On behalf of the petitioners, Mr. Atul Chandra Gupta has contended before us that the landlord cannot in law become his own tenant; and so, even after the

transfer to themselves of the interest of a co sharer tenant the opposite parties did not become co sharer tenants of the holding, but continued to be "landlords" only.

4. Section 2 (17), Bengal Tenancy Act, defines "tenant" as "the person who holds land under another person and is ....." Obviously, when a tenancy originates, the landlord and the tenant cannot be one and the same person. After a tenancy has come into existence, with say, A as the landlord, and B, as the tenant, is it right to say that if A acquires B's interest, or B acquires A's interest--the tenancy ceases to exist ? It has been held that this will depend on how far the law of merger will be applicable, and that whether the two interests--landlord's interest and tenant's interest--will merge or not, will depend on the intention of the person. Thus, under the ordinary law of merger, where say A was the landlord of a tenure, and B the tenant, and A purchases B's interest A may keep the tenure-holder's interest separate from the landlord's interest, and then there will be no merger. In such a case, A the landlord, and B the tenure-holder will be considered to be different persons, within the meaning of Section 2 (17), Bengal Tenancy Act.

5. Section 22 (1), Bengal Tenancy Act, introduces a special rule of merger, in providing that where the landlord of an occupancy holding is a proprietor (sic) a tenure-holder, and the entire landlord's interest and tenant's is united in the same person, the tenant's interest merges in the landlord. Section 22 (2) provides when the occupancy raiyat's interest and a co-sharer landlord's interest is combined in the same person, there will be no merger; but where a co-sharer landlord acquires the raiyati holding by purchase at a rent sale or certificate sale under the Act, the raiyati interest will merge in his landlord's interest, but he will have to pay a fair and equitable sum to the other co-sharer landlords.

6. It is important notice (sic) that Section 22 makes no provision for the case of the landlord's interest and a co-sharer tenant's interest being combined in the same person.

7. Turning now to the old Section 26 (F), Bengal Tenancy Act, we find that as soon as the landlord's application for pre-emption is granted, the right, title and interest in the holding accruing to the transferee, shall be deemed to have vested in the landlord whose application has been granted subject to the provision of Section 22. As Section 22 has no provisions applicable to a case where a landlord acquires part of the tenancy interest, the consequence of the above provision of Sub-section (5) of the old Section 26 (F) is that the opposite parties hold apart from the landlord's interest a share of the tenant's interest.

8. Mr. Gupta argues that the automatic result of this is that the tenant's interest is wiped out, and the tenancy continues only for the un-transferred portion and the landlord is the landlord for this altered tenancy. According to this argument, suppose there was a holding with a rent of Rs. 50, and an area of 10 bighas, and

on eight annas share of the tenant's interest being sold, landlord in exercise of his right of preemption acquires this eight annas interest, the tenancy will at once become one with a rent of Rs. 25 held by the owner of the unsold eight annas share under the landlord who has exercised the right of pre-emption. If this argument is not accepted, Mr. Gupta points out, the landlord will be able to sue the co-sharer who has not sold, for the entire Rs. 50, even though he is himself liable for Rs. 25. This is certainly a curious position. But another curious thing will result, if Mr. Gupta's argument of the automatic birth of a new tenancy is accepted. The area, in our illustration, was 10 bighas. Which portion of these 10 bighas will form the holding for the tenancy of Rs. 25? Obviously without a partition, this cannot be ascertained. The new tenancy with a rent of Rs. 25, will be, therefore, for an unascertained portion of the former holding. This is perhaps even more unsatisfactory than what results from the joint and several liability of each co-sharer tenant for the entire rent of the holding.

9. I am, therefore, unable to accept Mr. Gupta's argument that an automatic alteration of the tenancy by a process of reduction, takes place, when the landlord acquires part of the tenancy interest. Once a tenancy has come into existence, it must in law be held to be continuing, unless shown to have been extinguished, or split under the provisions of Section 88, Bengal Tenancy Act, and the burden of proving that it does not exist in the same form is on the person who says this. There is no case here of extinction of the entire tenancy, or a splitting of the old tenancy into two or more new tenancies. Mr. Gupta's argument is that part of the old tenancy has been extinguished by the mere fact of the landlord having acquired it. As I have stated above, the position according to the argument will be that a tenancy comes into being, but it is not known what lands it includes. This is a contradiction in terms.

10. In my judgment, when a landlord acquires part of a tenancy, no partial extinction of the tenancy results; the tenancy continues with only this change that the landlord, and the co-sharer tenant whose share has not been acquired, are now the tenants of the holding.

11. A somewhat similar question was considered by Derbyshire C. J. and Sen J. in *B.A. Basil and Others Vs. Charu Chandra Chatterjee* .

12. When they had to decide whether when a co-sharer tenant acquires the entire landlord's interest, the tenancy continues the same, their Lordships held that the tenancy continues, so that even after acquisition of the landlord's interest, a co-sharer tenant remains co-sharer tenant.

13. In *Amjad Talukdar Vs. Rohini Kanta Bhattacharjya and Others*, , Henderson J. sitting singly, had to consider exactly the question as is now before us, and decided that the landlord on acquiring share of a tenancy becomes a co-sharer tenant.

14. My conclusion is that the Courts below rightly held that the opposite parties were entitled as "co-sharer" to exercise a right of pre-emption under the new

Section 26 (F), Bengal Tenancy Act.

15. I would, therefore, discharge the Rule with costs. Hearing fee 3 gold mohurs.

Guha, J.

I agree.