
(1916) 02 CAL CK 0014
In the Calcutta High Court

Nirod Krishna Ghose and Others

APPELLANT

Vs

Maharaja Bahadur Sir Produt Kumar Tagore

RESPONDENT

Date of Decision : 10-02-1916

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 50
Evidence Act, 1872 — Section 34, 90

Citation : 32 Ind. Cas. 794

Hon'ble Judges : D. Chatterjee, J;Beachcroft, J

Bench : Division Bench

Judgement

1. In a proceeding u/s 105 of the Bengal Tenancy Act, for settlement of fair and equitable rent, the tenants relied upon receipts for 20 years to show uniform payment of rent as a basis for the presumption u/s 50 of the Bengal Tenancy Act. The landlord adduced evidence of jama wasilbaki papers more than 70 years old, and the lower Appellate Court, upon a consideration of these papers with the other evidence, has held that they have the effect of rebutting the said presumption raised by the proof of uniform payment of rent for 20 years.

2. It is contended that these papers were not admissible as independent evidence and that in any case u/s 34 of the Act they could not be relied upon as imposing a liability to enhancement upon the rent paid by the defendants. In the first place the papers are more than 70 years old and their genuineness can be presumed u/s 90 of the Evidence Act and in the second place, they cover a very long period and the lower Court was within its rights in believing them to be genuine. The case relied upon by the lower Appellate Court, Dukha Mandal v. Grant 16 Ind. Cas. 467: 16 C.L.J. 24, is in point and we think that it is not right to say that these papers have the effect of imposing any liability upon the tenants. Their effect is to rebut the presumption u/s 50 of the Bengal Tenancy Act by showing that previous to the 20 years for which uniform payment of rent has been shown, there was realisation, of different rates of rent. The liability to enhancement is imposed not by these papers but by the law which, in the absence of the presumption u/s 50 or upon rebuttal of that presumption,

imposes a liability to enhancement upon tenants.

3. In this view of the case, we think there is no substance in this appeal. We dismiss it with costs.