

(1894) 04 CAL CK 0004
In the Calcutta High Court

Nobin Chand Nuskar

APPELLANT

Vs

Bansenath Paramanick

RESPONDENT

Date of Decision : 02-04-1894

Acts Referred:

Bengal Tenancy Act, 1885 — Section 161, 3(5), 65

Citation : (1894) ILR (Cal) 722

Hon'ble Judges : W. Comer Petheram, C.J.; Ghose, J

Bench : Division Bench

Judgement

Ghose, J.—(Petheram, C.J., concurring).—We are of opinion that Mr. Justice Rampini is right in the conclusion which he has arrived at.

2. Chapter XIV of the Bengal Tenancy Act must, we think, be read with Section 65 of the Act; and the word "rent" as used in that section includes, by reason of the definition given in Clause 5 of Section 3, road cess payable to the landlord by the tenant. That being so the sale in execution of the decree obtained by the landlord for cess was a sale of the tenure under Chapter XIV, and the purchaser at that sale acquired the property free from the incumbrance created by the former tenant in favour of the plaintiff, it not being a registered and notified incumbrance within the meaning of Section 161 of the Act.

3. As regards the question discussed before us, that no notice was served upon the plaintiff so as to avoid the incumbrance in question, it was not raised in either of the lower Courts. We cannot assume, in the absence of facts, that no notice was given to the plaintiff. If the question had been raised, the defendant might have been able to show that such a notice was served on the plaintiff.

4. The appeal will be dismissed with costs.