

(1910) 01 CAL CK 0032
In the Calcutta High Court

Pirithi Chand Lal Chowdhury

APPELLANT

Vs

Sheikh Hazari

RESPONDENT

Date of Decision : 10-01-1910

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 50

Citation : 5 Ind. Cas. 453

Hon'ble Judges : Chatterjee, J

Bench : Single Bench

Judgement

Chatterjee, J.—This appeal arises in a proceeding u/s 105 for the settlement of fair rents. It has been found that the defendants or their predecessors were owners of six separate tenures which have been Amalgamated into one. They have proved uniform payment of rent for more than 20 years before the suit and the question is whether they are entitled to the benefit of presumption u/s 50 of the Bengal Tenancy Act. It has been contended that the provisions of Clause 3 of Section 50 itself indirectly bar the incidents of the presumption. I may also refer to the case of Udoy Chandra v. Nripendra Narayan 1 Ind. Cas. 4 : 13 C.W.N. 410 : 36 C. 287, which holds that when a tenure is subdivided into two separate tenures, the presumption ceases to operate. The ratio decidendi of that case is that when Clause 2 of the section mentions both tenures and holdings as amenable to the presumption, Clause 3 refers only to holdings of raiyats and it must be presumed that the Legislature intended to exclude tenures from the benefit of Clause 3. This principle, if applied to this case, would bar the presumption as the amalgamation is one of tenures.

2. The facts found in that case, however, were that there was a fresh contract under which the two tenures were created in place of one. In this case also a fresh settlement in 1282 was pleaded by the plaintiff, but has not been proved and this case may, therefore, be distinguished from the above case, in two points, (1) that this is a case of amalgamation of six distinct tenures into one (2), that no new contract is established.

3. Upon a close reading of the provisions of Section 50, I find that Clause 2 creates a presumption equally in favour of all tenure-holders and raiyats and clause three saves the operation of the presumption in favour of raiyats when the land has been separated from another holding or been added to another holding. In the case of amalgamation it is not necessary that the land added should have previously formed part of another holding and may be land which had never been a part of another holding. The case of two holdings being amalgamated into one is left entirely untouched by Clause 3 and must be decided by reference to the general provision under Clause 2. So in the case of two or more distinct tenures being amalgamated into one, reference must be made to the general provisions of Clause 2 and upon such reference, I find that the presumption (1) which would have applied to the six different tenures if they had stood separately, applies to the amalgamated tenure. The appeal^ therefore, will be dismissed with costs.