

**(1918) 04 CAL CK 0029**  
**In the Calcutta High Court**

Prosanna Deb Roykot

APPELLANT

Vs

Safuruddin Ahmed and Another and Kamiruddin Mahmed and  
Another

RESPONDENT

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**Date of Decision :** 26-04-1918

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 50(2)

**Citation :** 46 Ind. Cas. 433

**Hon'ble Judges :** Syed Shamsul Huda, J; Fletcher, J

**Bench :** Division Bench

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## Judgement

Shamsul Huda, J.—This appeal arises out of a suit u/s 108 of the Bengal Tenancy Act for the correction of an entry in a khatian, in which the tenancy has been recorded as a tenure the rent of which is liable to enhancement. The plaintiffs who are the tenants wanted to establish that they were ryots and not tenure-holders and that rent was not liable to enhancement. Both Courts have held that the tenancy is not a raiyati holding but a tenure. The only question for consideration in this appeal is whether the rent is liable to enhancement. The plaintiffs were able to prove that they had paid rent at a uniform rate for over twenty years and thereby had established a presumption u/s 50 of the Bengal Tenancy Act that the tenure had been held at the same rate from the time of the Permanent Settlement. The landlord defendant tried to rebut the presumption by showing that the tenants had subsequent to the Permanent Settlement executed kabuliyats whereby the old holding had been amalgamated or split up into separate tenancies and these kabuliyats, it was contended, created new tenancies and thereby the presumption u/s 50 had been rebutted. It has been argued with reference to the proviso to Section 50 that, in the case of a tenure, the mere fact of a sub-division or amalgamation is sufficient to rebut the presumption, although this would not be so if it were a raiyati holding. In support of this contention, the case of Uday Chandra Karji v. Maharaja Nripendra Narayan Bhup (2) has been cited before us. On the other hand, the case of Bisseswar Ray Chowdhry v. Rajendra Kumar Singha (1) has been relied on to show that even in

the case of a tenure a mere sub-division or amalgamation is not sufficient to destroy the presumption. I agree with the later case and hold that even in the case of a tenure a mere subdivision or amalgamation does not necessarily mean the creation of a new tenure and does not destroy the presumption regarding the fixity of rent. There is, however, in the present case a condition in the kabuliyat (Exhibit B) which shows that the tenant agreed to accept a fresh lease at the jama which may be assessed in future upon a measurement of the jote. It has been argued that this condition only refers to additional rent to be paid at the old rate for additional area that may be found in the possession of the tenant upon a fresh measurement. Having read this document and having regard to the surrounding circumstances, I am of opinion that this is not a stipulation merely to pay additional rent for additional area but to pay rent according to the Perganah rate. That being so, it seems clear that the presumption arising out of payment of rent at a uniform rate for over twenty years has been rebutted in this case. The decrees of the Courts below must, therefore, be set aside and in lieu thereof it should be declared that the tenancy in suit is liable to enhancement of rent. The appeal is, therefore, decreed with costs in this Court and in the Courts below.

Fletcher, J.

2. I agree