

(1878) 08 CAL CK 0008
In the Calcutta High Court

Purnanund Asrum

APPELLANT

Vs

Rookinee Gooptani

RESPONDENT

Date of Decision : 29-08-1878

Acts Referred:

Citation : (1879) ILR (Cal) 793

Hon'ble Judges : Markby, J

Bench : Single Bench

Judgement

Markby, J.—It appears to me that the judgment of Mr. Justice Ainslie was right. The plaintiff, who was an auction-purchaser, and claimed the privileges of Section 37 of Act XI of 1859, sued, not to eject but to enhance the rent of the defendant, alleging him to be a person holding a lease of land whereon a dwelling-house had been erected, and to have held the same at what was originally an unfair rent, and not to have been holding at a fixed rent equal to the rent of good arable land for a term exceeding twelve years,

2. The defendant, however, stated that he was a person coming under the first exception of the 37th section, that is to say, that he was the holder of an istemrari or mokurari tenure which had been held at a fixed rent from the time of the Permanent Settlement.

3. The question arose, as I understand, in this case, in what manner the defendant was to make out this claim of exemption, and the opinion of Mr. Justice Ainslie was, that in cases of this sort, when the plaintiff seeks to enhance being bound by the provisions of Section 37 to proceed in the manner prescribed by any law for the time being in force, that is to say, the present Beng. Act VIII of 1869 all the sections of that Act relating to the procedure apply on the part of the defendant as well as the plaintiff, and amongst others, Section 4, which enables the ryot to give evidence that the rent of his land has not been changed for a period of twenty years before the commencement of the suit, and thereupon the presumption arises. It appears to me that that conclusion is correct. Whether we regard the terms of Section 37 taken together, or the

particular language of the last proviso of that section, it seems clear that when a purchaser under the Revenue Sale Law seeks to enhance, he must enhance the person whose tenure is the subject of suit in the manner prescribed by the Law in force for the time being in regard to enhancement. It seems to me that the word "ryot" really makes no difference, because if the defendant does not come within the description of ryot, then there is no power given by this section to enhance at all. He can only be enhanced according to that section if he comes within the fourth class of exceptions, and if a person holding under that class of exceptions be not a ryot then there is no power to enhance him; and I also think that the legislature in passing these two enactments, almost in the same breath, and conferring upon purchasers of estates the powers granted by Section 37 at the same time that they recognized in old ryots the rights which are declared by Act X of 1859, must have intended to give to ryots holding ancient tenures the same means of protecting themselves against persons claiming to enhance under the Revenue Sale Law as against other enhancing or ejecting landlords. The appeal is dismissed with costs.