
(1935) 02 CAL CK 0027
In the Calcutta High Court

Radhika Lal Gossami and Others

APPELLANT

Vs

Satish Chandra Sen Majumdar and Another

RESPONDENT

Date of Decision : 09-02-1935

Acts Referred:

Bengal Tenancy Act, 1885 — Section 26F

Citation : 168 Ind. Cas. 348

Hon'ble Judges : S.N. Guha, J

Bench : Single Bench

Judgement

S.N. Guha, J.—This Rule is directed against an order passed by the Munsif, 1st Court at Maladh, in a proceeding u/s 26-F of the Bengal Tenancy Act. It was held by the Munsif. that the applicants for pre-emption, the petitioners in this Court, were liable to pay full consideration money for the holding transferred by the raiyat with a right of occupancy, as mentioned in the kobala. The consideration mentioned in the kobala was Rs. 300; Rs. 50 for land and Rs. 250 for the trees standing on the land.

2. The applicants u/s 26-F, Bengal Tenancy Act, were under the law required to deposit the entire amount of consideration or value of the property sold, the holding of the transferor; and a holding must include all that is appurtenant to it; such appurtenances including structures on the holding which are improvements, (as in the case of Abdul Hai Vs. Abdur Rahman and Others, and standing trees which cannot be separately considered from the tenancy. In the present case, trees were standing on the land appertaining to the tenancy, and the transferee from the tenant had paid full consideration or value for the land and trees standing on the land; for enabling the pre-emptor, therefore, to exercise his right under the law the transferee from the tenant has to be fully compensated in the matter of payment made by him for all that was appurtenant to the tenancy and was sold by the tenant in possession. It was not suggested in the case before us, that the property in the trees sold as appurtenant to a holding was not in the tenant transferor. In the above view of the case, as it was not possible to hold

that the trees on the holding were not appurtenant to the tenancy, and regard being had to the fact that the transferor tenant had received from the transferee full value of the trees standing on the tenancy, the decision of the Court below must, in my judgment, be upheld. The Rule is discharged. The petitioners are allowed one month's time from the date of arrival of the record in the lower Court, to carry out the directions of the Court. On failure to carry out the directions within the time allowed, the application u/s 26-F of the Bengal Tenancy Act made by the petitioners will stand dismissed.