

(1935) 05 CAL CK 0040
In the Calcutta High Court

Rai Satyendra Nath Bhadra Bahadur and Another	APPELLANT
Vs	
Charu Sankar Roy Chowdhuri and Others	RESPONDENT

Date of Decision : 10-05-1935

Acts Referred:

Citation : AIR 1936 Cal 100

Hon'ble Judges : R.C. Mitter, J

Bench : Division Bench

Judgement

R.C. Mitter, J.—In this case the defendants-appellants are admittedly the tenants of the plaintiffs-respondents in respect of a plot of land in the town of Faridpore. The defendants attempted to raise pucca buildings on the lands in suit whereupon the plaintiffs instituted the suit on 16th January 1931 for a declaration that the defendants were ticca tenants on the lands, they had no right to construct pucca buildings and for an injunction to restrain them from continuing the building operations and for a mandatory injunction for removal of the structures already raised before the suit. The substantial defence of the defendants was that the tenancy was a permanent one. In the Court of first instance they succeeded and the learned Munsif held that the tenancy was a permanent one. He accordingly made a decree in part, making a declaration in the plaintiffs' favour that they had title to the suit lands but inasmuch as he found that the tenancy was a permanent one the prayer for mandatory and perpetual injunction was disallowed. The plaintiffs preferred an appeal to the learned District Judge of Faridpore which was heard by the Subordinate Judge, Second Court, of that place.

2. The learned Subordinate Judge has come to the conclusion that the evidence led by the defendants is not sufficient to support the claim to a permanent tenancy. It is admitted that the land had been let out for residential purposes before the Transfer of Property Act came into force and that its origin is unknown. It has been proved that on one occasion it passed by succession and that it was twice sold and the transferees were recognized as tenants. There are

no pucca old structures on the land except that there are two privies with pucca plinths and there is a tank in existence. It may also be taken to be established that the rent has remained unvaried, namely Rs. 5 a month, and that the land values have risen in the town of Faridpore and are still rising, the evidence being that the land values having gone high some time in the year 1910. These are the facts which have been proved by the defendants; on the part of the landlords these facts have been proved, namely that in the deeds of transfer-one has been proved only in the case-there is no assertion by the transferor that his tenancy was a permanent one; secondly that although the land values in the town of Faridpore have gone up since the year 1910 there was a large body of co-sharer landlords amongst whom there was no agreement whatsoever, so much so, that even rent was not realized since the year 1901, that only in the year 1913 or so, as a result of a partition and other transactions, the number of co-sharers was reduced, and since the year 1913 when the co-sharers were reasonable in number the claim to a permanency by the defendant's ancestor and by the defendants had all along been resisted. It has not been proved also that the tank was excavated by the tenants. This evidence adduced on behalf of the landlords has been accepted by the learned Subordinate Judge, that is to say the learned Subordinate Judge has given an adequate explanation relating to their inaction in raising the rent up to the year 1913. They have also proved that whenever attempts were made by the defendants or their predecessors since the year 1913 to claim a permanent right in the land those attempts had been resisted and their claim denied.

3. The evidence led by the landlords as to the effect of the recognition of one of the transferees also, in my judgment, affords a sufficient explanation because when there was no assertion in the sale-deed by the transferor to a permanent right in the land a recognition of the transferee under those circumstances would not be of much evidentiary value for the purpose of supporting a claim to permanency. I still go further and hold that unless there be a series of transfers of a tenancy for residential purposes of which the origin is unknown and a series of recognitions, the Court would not be right in inferring that the tenancy was in its origin of a permanent character. If there be one transfer or one or two transfers only and a recognition by the landlords of the transferee that fact may be attributable to other circumstances than to the fact that the landlord recognized the transferee feeling that he was under the obligation to recognise him on the footing that the tenancy was a permanent tenancy. There would be far little scope for drawing an inference in favour of the tenants where there are only one or two transfers only and where in the deeds of transfer no assertion is made by the tenant that his tenancy is of a permanent nature. Having regard to this evidence the only things which have been proved by the tenants and in respect of which there is no explanation on behalf of the landlords are these: (1) that the tenancy was for residential purposes; (2) that its origin is unknown; (3) that the rent has not been varied at any time; and (4) that there have been one or possibly two transfers. These circumstances in my judgment do not lead to

the inference that the tenancy was in its origin of a permanent character. For these reasons, I uphold the finding of the learned Subordinate Judge that the defendants have failed to prove that their" tenancy is of a permanent nature. That being so, I hold that the decree passed by the learned Subordinate Judge in this case is the correct decree and the appeal must be dismissed with costs. The application for leave to appeal is rejected.