

(1917) 07 CAL CK 0062
In the Calcutta High Court

Rajani Sundari Dassi and Another

APPELLANT

Vs

Hara Sundari Dassi and Kazem Mandal and Others

RESPONDENT

Date of Decision : 06-07-1917

Acts Referred:

Bengal Tenancy Act, 1885 — Section 88

Citation : 41 Ind. Cas. 501

Hon'ble Judges : Newbould, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal by the defendants Nos. 27 and 28 against a decision of the learned Subordinate Judge of Nadia, dated the 25th March 1916, reversing the decision of the Munsif at Chuadanga. The plaintiff brought the suit as co-sharer landlord to recover rent in arrears. The defendants Nos. 27 and 28 are admittedly co-sharer landlords. The plaintiff's case was that the rent was Rs. 49 odd. The case set up by the defendants-appellants was that true the rent was Rs. 49 odd but that the tenancy had been sub-divided and instead of one holding held at the rent of Rs. 49 odd there were two holdings, one of which was held at a rent of Rs. 34 odd of which the principal defendants were the tenants and another held at a rent of Rs. 14 odd of which the defendant No. 27 was the tenant. The first Court adopted the view of the appellants. The second Court has reversed that decision. The main point in this case turns on the provisions of Section 88 of the Bengal Tenancy Act as applicable in Bengal or Behar. We are not concerned with the Act as it now is in Eastern Bengal or formerly in Bengal proper. The case turns on this: First of all, whether certain rent-receipts that have been produced show an express consent in writing to the division of the tenure or holding or the distribution of the rent payable in respect thereof as mentioned in that Section. An express consent means a consent opposed to one which is to be implied from the documents. There are no express words in these rent-receipts of a consent. The consent, if any, arises from the implication that the landlord received the rents and granted the receipts with a knowledge that the holding had been sub-divided. It is impossible to say from these rent-receipts

that there was an express consent.

2. The next point that has been urged is that Section 88 of the Bengal Tenancy Act is qualified by a proviso. It is not always easy for the tenant to produce an express consent. It may be verbal or acted on by both parties or may be lost. So the Legislature provided that an entry in the landlord's rent-roll to the effect mentioned above should be prima facie evidence of the consent mentioned in the former part of the Section. The question is whether the document produced in the present case is a rent-roll. The learned Judge of the lower Appellate Court states that the document produced is not a rent-roll. The document is what is called a jama wasil baki; that is, I understand, an annual statement of the rents payable and received from a particular estate. The jamabandi is what is called in England a rent roll, namely, a permanent document kept in the estate office or the sheristha of a landlord, which contains a list of the tenants and the rents payable by them and which, I suppose, is kept up and amended from time to time. That, I suppose, is the rent-roll mentioned in the proviso of the Section. However, there seems to be no reason to think that the learned Judge in the lower Appellate Court was not right when he said that this document, the jama wasil baki, was not the rent-roll. Therefore, the presumption which arises by virtue of the proviso did not arise in the present case.

3. The last point that was urged was that in a road cess return made in the year 1901 by one of the co sharers not the plaintiff the sub-division of the tenancy was referred to. That, of course, cannot be taken to be an express consent in writing. I think it may be evidence of consent. But the question is "does it evidence a consent in writing"? Before looking into a document like this to establish a consent in writing, it must be proved, first of all, that there had been a consent in writing, and secondly, that the consent in writing, although sought for, could not be produced and, therefore, it must be presumed, at any rate, against the person who made it that there had been a consent and that that consent was in writing as stated by some witnesses who were believed to have proved it. A document like this cannot be taken in evidence as principal evidence to prove a consent in writing, which apparently did not exist. In my opinion, the learned Judge of the lower Appellate Court arrived at a correct conclusion. The present appeal, therefore, fails and must be dismissed with costs.

Newbould, J.

4. I agree.