
(1894) 04 CAL CK 0010
In the Calcutta High Court

Rajeshwar Pershad Singh

APPELLANT

Vs

Burta Koer

RESPONDENT

Date of Decision : 13-04-1894

Acts Referred:

Bengal Tenancy Act, 1885 — Section 158

Citation : (1894) ILR (Cal) 807

Hon'ble Judges : Rampini, J;Ameer Ali, J

Bench : Division Bench

Judgement

Ameer Ali and Rampini, JJ.—This is a case u/s 158 of the Bengal Tenancy Act. The plaintiffs are the landlords, and they apply for the determination of the incidents of the defendant's tenancy.

2. The only point raised before as in this appeal is that the lower Courts, in determining the rent payable by the defendant, have not fixed that rent in accordance with the rates paid for similar lands in the vicinity, but have calculated it at the rates hitherto paid by the defendant. In short, the objection is that the Courts below have not enhanced the defendant's rent. We, however, think the lower Courts are right. Section 158 (d) lays down that a Court dealing with an application u/s 158 is to determine the rent payable by the tenant "at the time of the application." It, therefore, could not have been intended that in a case under this section the Court should pass a decree for enhancement which can ordinarily only take effect from the beginning of the agricultural year, next following, or from that of the year next but one following, the year in which the decree was passed.

3. It has been said that when no settlement proceedings are going on, an application u/s 158 takes the place of an application u/s 104 (2), in the course of which a Settlement Officer has power to enhance or reduce a tenant's rent. This is quite true, but when settlement proceedings are going on, the jurisdiction of the Civil Court is in abeyance (see Section 111 a), so that no enhancement suit can then be instituted, and hence it is that the Settlement Officer is empowered

to alter a tenant's rent. But an application u/s 158 does not oust the jurisdiction of the Civil Court in respect of the alteration of a tenant's rent. It, therefore, seems to us that if a landlord seeks to enhance his tenant's rent when no settlement proceedings are going on, must institute a suit for the purpose, and cannot do so by means of an application u/s 158.

4. We accordingly dismiss this appeal with costs.