

(1936) 02 CAL CK 0048
In the Calcutta High Court

Ramshashi Ghose

APPELLANT

Vs

Mohendra Nath Sinha and Another

RESPONDENT

Date of Decision : 07-02-1936

Acts Referred:

Bengal Tenancy Act, 1885 — Section 26F

Citation : AIR 1936 Cal 223

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

Bench : Division Bench

Judgement

R.C. Mitter, J.—In these three Rules the petitioner applied for pre-emption under the provisions of Section 26-F, Ben. Ten. Act. He and the opposite parties are co-sharer landlords in respect of three occupancy holdings which are the subject matters of the three pre-emption cases out of which these Rules arise. Later on there was a proceeding under the Estates Partition Act and two of the holdings were allotted exclusively to the allotment of the petitioner, but the third holding was allotted partly to the petitioner and partly to the opposite parties. The opposite parties instituted suits for rent for these three holdings for a period anterior to the partition. In those suits the petitioner was not impleaded as a party. Decrees were obtained and in execution thereof these three holdings were purchased by opposite parties Nos. 1 and 2. On that the present petitioner applied for pre-emption. These facts are not challenged and the decrees are therefore money decrees. In this view of the matter, I do not see how the application of the petitioner could be resisted. The opposite parties did not resist the application, but in spite of that the petitioner's applications have been dismissed. I, therefore, hold that the lower appellate Court was wrong in dismissing those applications. The Rule is accordingly made absolute and the order for preemption must be made in respect of the three holdings in favour of the petitioner. As there is no appearance on behalf of the opposite party, there will be no order for costs.