

(1933) 08 CAL CK 0012
In the Calcutta High Court

Sakti Saran Sinha and Others

APPELLANT

Vs

Radha Raman Mondal and Others

RESPONDENT

Date of Decision : 24-08-1933

Acts Referred:

Bengal Tenancy Act, 1885 — Section 26J
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1934 Cal 396

Judgement

1. This rule is directed against an order of the Munsif of Sadar Court, Suri, dated 25th January 1933. The present applicants made an application to have that order reviewed by the learned Munsif himself, but on 29th April 1933 that application was rejected. The order complained of was made in connection with an application on the part of the present petitioners u/s 26-J, Ben. Ten. Act. As the learned Munsif has put it the application was assailed by the other side on two grounds: first because it was not brought within two months of the date of service of the notice; and secondly, because the holding to which the notice referred was in fact a Mokarari holding and recorded as such in the Cadastral Survey Khatian.

2. It appears that the holding in question consisted of some 11½ bighas. Of these 11½ bighas 7 were sold by the opposite parties 3 and 4 to the father of the opposite parties 1 and 2. The transferors purported to transfer a holding which was Mokarari. Notice of that transfer was served on the first of the several petitioners before us Sakti Saran Sinha who is said to be a pleader by profession. That notice was given on 22nd July 1929. A similar notice of transfer appears to have been served on the remainder of the petitioners before us on 26th July 1929. The residue of the holding consisting of about 4½ bighas was sold by the opposite parties 3 and 4 to the father of the opposite parties 1 and 2 on a subsequent date and the sale again purported to be a sale of a Mokarari holding. Notice of this transfer was served on all the parties concerned, that is to say the present petitioners on 10th February 1932. It must therefore be taken that on 10th February 1932 the present petitioners were aware of the fact that the

transfer of the whole of the holding had taken place and the transfer was upon the basis that the holding was Mokarari. One would have thought that in those circumstances if the petitioners thought, as they think now, that the holding was not mokarari and therefore they were entitled to a Selami on the basis that the holding was in the nature of an occupancy holding they would have taken immediate steps to have had the matter properly decided by applying u/s 26-J for the balance of the landlord's transfer-fee. The petitioners however took no steps until 16th July 1932 when they made the application which ultimately resulted in the order of the Munsif which is now challenged. The learned Munsif having as I have said, pointed out that two points had been raised by those opposing the application dealt with the matter on the footing of the first of those two points and he came to the conclusion that although there is no specific provision in Section 26-J or indeed in any of the sections dealing with the point nevertheless by analogy of the provisions contained in Section 26-F, Sub-section 1, with regard to the time within which a landlord may apply to Court that the holding shall be transferred to him it ought to be held, at any rate by implication, that the limit of time within which an application should be made u/s 26-J is a period of two months.

3. It appears however on a close and careful examination of all those sections which are numbered 26 and distinguished by a letter of the alphabet that in none of them is there any provision, certainly no express provision or even any implied provision for any such limitation of time as the learned Munsif seems to think. We have come to the conclusion that the position is that no limitation was provided in the Bengal Tenancy Act as regards limitation for an application to recover balance of the landlord's transfer-fee. As has now been decided by this Court the right procedure u/s 26-F is by way of an application and not by way of a suit. That being so it would seem, having regard to the provisions of Section 185 of the Act that as the proceedings u/s 26-J are to be by way of an application the only possible Article of the limitation Act which can be made applicable is Article 181. Upon that view of the matter we have regretfully to come to the conclusion that the order made by the learned Munsif cannot be sustained. I should like to point out that it may well be that this question of limitation for applications in proceedings u/s 26-J may have been overlooked at the time when this section was drafted and enacted, because upon the footing that Article 181 applies to proceedings under this section it brings it about that whereas u/s 26-F a landlord has only a total period of two months within which to exercise his right of pre-emption, u/s 26-J he may have almost an indefinite time within which to exercise his right to recover balance of landlord's transfer-fee, because although by virtue of Article 181 he has to institute the proceedings within a period of three years those proceedings may very likely be prolonged or adjourned for some reason or other with the result that several more months if not years might have elapsed before the moment arrives at which the money due to the landlord by way of balance of transfer-fee finds its way into Court so as to bring into operation the provisions of Sub-section 3, Section 26-J It would

seem that if and when there is any further amendment of the Bengal Tenancy Act this point might usefully be taken into consideration by the legislature.

4. In the meantime, however, it is our bounden duty to administer the law as it stands and although having regard to the delay in connexion with these proceedings particularly bearing in mind that even after the application for a review of the Munsif's order was rejected there was a further delay of some two and a half months before the matter was brought to this Court, nevertheless we think this is a case where we ought to exercise the discretion given to us by Section 115, Civil P.C. and to treat the order of the Munsif as an order which in effect touched upon a matter of jurisdiction. This rule must accordingly be made absolute and we direct the learned Munsif to hear the application upon its merits he not having gone into the second point which he himself stated as being one of the points taken in opposition to the application before him. Having regard to all the circumstances of the case we make no order as to costs of this rule.