
(1914) 04 CAL CK 0049
In the Calcutta High Court

Shaikh Inatullah Daftry

APPELLANT

Vs

Shaikh Moison Ali and Another

RESPONDENT

Date of Decision : 29-04-1914

Acts Referred:

Bengal Tenancy Act, 1885 — Section 22(2)

Citation : AIR 1915 Cal 86 : 25 Ind. Cas. 414

Hon'ble Judges : Woodroffe, J;Mullick, J

Bench : Division Bench

Judgement

Woodroffe, J.—It has been urged on behalf of the appellant that the suit is barred under the special law of limitation of two years provided by the Tenancy Act. It is conceded, however, that if Section 22 (2) of the Bengal Tenancy Act applies then in so far as the plaintiff would not in such case be a raiyat, the special limitation would not be applicable. The contention, however, is that Section 22 (2) does not apply because this refers to a transfer of the occupancy rights and, therefore, assumes that the holding of the occupancy raiyat is capable of transfer. As regards this, however, it must be noted that the Court has found that the plaintiff's purchase was recognised and that rent has been received from him by his Co-proprietors. The fact may be looked at in one of two ways--either such evidence of recognition may be regarded as evidence that the holding is one which can be transferred, or it is a case in which co-proprietors have validated a transfer which had previously taken place and which is possibly voidable at their instance. In either case it seems to me that Section 22 would apply.

2. Section 22(2) provides (I am referring to the Eastern Bengal Tenancy Act) that "if the occupancy right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, such person shall have no right to hold the land as a raiyat, but shall hold it as proprietor or permanent tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and-occupation of the same."

3. I would, therefore, modify the decree which declares the plaintiff's raiyati

right into a decree which affirms the plaintiff's right by purchase from the original tenant and declare that as such purchaser he is entitled to hold the lands so purchased on payment to his co-sharers of a fair and equitable sum for the use and occupation of the same

4. There is nothing in the judgment before us which tells us the actual amount of the rent paid by the original tenant and subsequently by the plaintiff.

5. Subject to this modification which does not affect the merits of this appeal the appeal must be dismissed with costs.

Mullick, J.

6. I agree.