

(1925) 04 CAL CK 0040
In the Calcutta High Court

Sreemati Rakhya Mani Debi

APPELLANT

Vs

Paramesh Chakrabarti

RESPONDENT

Date of Decision : 23-04-1925

Acts Referred:

Citation : 96 Ind. Cas. 89

Hon'ble Judges : Cuming, J

Bench : Single Bench

Judgement

Cuming, J.—In the suit out of which this appeal arises the plaintiff sought to eject the defendant from a certain parcel of land, the area being about 1 bigha 10 cottas, on the ground that the defendant was tenant-at-will and had no transferable and permanent right to the land and that the plaintiff had served a notice on the defendant to quit.

2. The case of the defendant was that the case was governed not by the provisions of the Transfer of Property Act but by the provisions of the Bengal Tenancy Act, that the land was originally obtained for horticultural purposes and hence the provisions of the Transfer of Property Act did not apply but the provisions of the Bengal Tenancy Act would apply.

3. Both the lower Courts have decided against the plaintiff, holding on a consideration of all the facts and on a construction of the kabuliyat (Ex. No. 13) that the land was taken for horticultural purposes. After a careful consideration of the kabuliyat Ex. No. 13 I am not prepared to say that the lower Courts are wrong in the view which they have taken as to the construction of the kabuliyat. The kabuliyat states "that I having prayed for and being granted a ticca settlement in respect of the 8 aunas share of the garden land measuring about 1½ bighas and described in the Schedule together, with cocoanut, aricanut and mangoe trees, etc., standing thereon"... "You are pleased to sanction my prayer and fix the jama in respect of the said 1½ bighas of land together with the trees, etc., standing thereon".... "I shall go on enjoying the fruits of all the trees, etc., that are on the said land but shall not be competent to cut down or sell, etc., the

same; and I shall enjoy the fruits of the trees that I will plant and shall not be competent to cut down and sell, etc, the same without your written permission." In the case of Hedayet Ali v. Kalanand Singh 20 Ind. Cas. 332 : 17 C.L.J. 411 Mr. Justice Mookerjee remarks (at page 415 Pages of 17 C.L.J.--[Ed.]) "Here again it must be pointed out that horticulture means the cultivation of a garden or the science of cultivating or managing garden, including growing flowers, fruits and vegetables. If the lease was for the purpose of gathering fruits from the trees on the land, it cannot be affirmed that the lease was for horticultural purposes." In this case it has been found that the lease was also for the purpose of growing trees. It is after all a question of fact and I am not prepared to say that the lower Appellate Court is wrong in coming to the conclusion that it has come to on the document before it (Ex. 13) together with the other facts of the case.

4. The result, therefore, is that this appeal is dismissed with costs.