

(1939) 08 CAL CK 0009
In the Calcutta High Court

Suresh Chandra Sen and Another

APPELLANT

Vs

Jadav Chandra Saha

RESPONDENT

Date of Decision : 29-08-1939

Acts Referred:

Bengal Tenancy Act, 1885 — Section 26(G)

Citation : AIR 1940 Cal 372

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—This is a rule calling upon the mortgagor to show cause why an order of the Munsif restoring him to possession u/s 26(G), Ben. Ten. Act, should not be set aside. The ground upon which the rule was issued is that the document in question is not a usufructuary mortgage. The main provision of the document is that on receipt of a loan of Rs. 700, the possession of the property was made over to the mortgagee. It was then stipulated that after a period of 28 years the debt would be extinguished both as regards the principal and interest. The difficulty arises in the other clauses. On behalf of the opposite parties, it is contended by their learned advocate that these clauses are nothing more than a rather clumsy expression of the rights of the mortgagee under the law. If that were so, I should have no hesitation in discharging the rule. There is however a stipulation by which the mortgagor agreed that in the event of the mortgagee being dispossessed of the property in any way, the mortgagor would, on account of the period of dispossession, be liable to pay interest at the rate of 6 pies per rupee per month. There was, in addition to this, a personal covenant to pay. In view of this stipulation, it must be held that the mortgage in question is an anomalous mortgage. The rule is accordingly made absolute. The order of the lower Court is set aside. I make no order for costs.