

(1909) 01 CAL CK 0014
In the Calcutta High Court

Uday Chandra Karji

APPELLANT

Vs

Maharaja Nripendra Narayan Bhup Bahadur and Another

RESPONDENT

Date of Decision : 13-01-1909

Acts Referred:

Citation : (1909) 01 CAL CK 0014

Judgement

1. The plaintiff is the appellant. A record of rights having been prepared the plaintiff was recorded in it as a tenure holder and his tenure as not held at fixed rent. He then brought a suit u/s 106 of the Bengal Tenancy Act before the Settlement Officer, who decreed the suit and hold that the tenure of the plaintiff was very old, in fact existing from period of 150 years before 1884. On the defendant appealing to the Special Judge that learned officer held that, inasmuch as the original tenure of which the rent was 4 Rupees 8 Annas, was split up into two tenancies in 1291 (1884) that old tenure ceased to exist and under the new contract instead of that tenure there sprang up two new tenancies at the rental of Rs. 2-4 each. On that ground he held that the plaintiff was not entitled to claim that his tenure had existed from the time of the permanent settlement.

2. Our attention has been drawn to Clause (2) of Section 50 of the Bengal Tenancy Act by the learned pleader for the plaintiff-appellant and it has been contended that the presumption arises in favour of the plaintiff's contention under that section, But we find that Clause (3) of that section, which is a special protection for lights, provides that the operation of Section 50, so far as it relates to lands held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding. The plaintiff's predecessors held under a contract with the landlord with, regard to one tenure bearing a rental of Rs. 4-8, which in 1884 was split up into two tenancies each bearing a rent of Rs. 2-4. It is contended on behalf of the plaintiff that as a matter of fact there has been no change either in the rent or in the rate of rent. What has been done is that for the sake of convenience the old tenure has been divided into two, bearing an equal jama. But as a matter of fact since 1884 there have been two tenancies not under the contract under which the old tenure was

held but under a new contract between the landlord and the tenure-holder. These two tenancies are two distinct tenancies under a different contract and for payment of arrears of rent separate suits have to be brought. It cannot be said that the old tenure still exists in the shape of these two new tenancies.

3. The words "so far as it relates to land held by a raiyat" in Section 50, Sub-section (3), clearly imply that the operation of the section, so far as it relates to land held by a tenure-holder, is affected by the separation of the land from other land which formed with it a single tenure. Under these circumstances we think that the judgment of the Special Judge is unassailable. This appeal is accordingly dismissed with costs.