

(1909) 01 CAL CK 0039
In the Calcutta High Court

Udoy Chandra Karji

APPELLANT

Vs

Nripendra Narayan Bhup

RESPONDENT

Date of Decision : 13-01-1909

Acts Referred:

Bengal Tenancy Act, 1885 — Section 106, 50(2)

Citation : (1909) ILR (Cal) 287

Hon'ble Judges : Sharfuddin, J;Coxe, J

Bench : Division Bench

Judgement

Sharfuddin and Coxe, JJ.—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 a fixed rent. He then brought a suit u/s 106 of the Bengal Tenancy Act before the Settlement Officer, who decreed the suit and held that the tenure of the plaintiff was very old, in fact, existing from a period of 150 years before 1894. On the defendant appealing to the Subordinate 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 old tenure there sprang up two new tenancies at the rental of Rs. 2-4-0 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 raiyats, 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. 4-8-0, which in 1884 was split up into two

tenancies each bearing a rent of Rs. 2-4-0. 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. 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.

3. Under these circumstances, we think that the judgment of the Special Judge is unassailable. This appeal is accordingly dismissed with costs.