

(1916) 12 CAL CK 0010
In the Calcutta High Court

Upendra Nath Ghose and Others

APPELLANT

Vs

Dwarka Nath Biswas and Another

RESPONDENT

Date of Decision : 18-12-1916

Acts Referred:

Bengal Tenancy Act, 1885 — Section 50(2)

Citation : 55 Ind. Cas. 790

Hon'ble Judges : Newbould, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. Defendants Nos. 1 and 3, who purchased the tenure in suit from defendant No. 4, appear to have paid rent for about 37 years and the rent was accepted from them. Plaintiff, therefore, is not entitled to obtain khas possession of the tenure as his right to do so is barred by limitation. That being so, the plaintiff cannot ignore the right of defendants Nos. 1 and 3 who were entered in the Record of Rights as tenants. We do not see, however, why the plaintiff should not get a decree for rent at the enhanced rate of Rs. 90 odd. It is true there is a presumption u/s 50 (2) Of the Bengal Tenancy Act arising from the payment of rent at the same rate for more than twenty years; but the plaintiff has produced a Kabuliyat of the year 1840, executed by the predecessor in interest of the defendant No. 4--the vendor of defendants Nos. 1 and 3. There is an express stipulation in the Kabuliyat that the tenants would pay enhanced rent according to the Pargana rate. The Kabuliyat may be considered either as a new contract under which the tenants agreed to pay enhanced rent, or as a contract containing recitals of the incidents of the tenancy which was in existence from before. In either view of the matter it shows that the rent was enhanceable. That being so, the enhancement allowed by the Court of first instance will stand; and to that extent only the decree of the Court of first instance is varied.

2. The result is that the decree of the lower Appellate Court is set aside and the decree of the Court of first instance affirmed with respect to the amount of rent payable by the defendants. The entry of the names of defendants Nos. 1 and 3 in

the Record of Rights will stand. Under the circumstances of the case, we direct that each party do bear its own costs in all the Courts.