

(1916) 12 CAL CK 0028
In the Calcutta High Court

Upendra Nath Ghose and Others

APPELLANT

Vs

Gopi Charan Saha and Others

RESPONDENT

Date of Decision : 12-12-1916

Acts Referred:

Bengal Tenancy Act, 1885 — Section 50(2)

Citation : 44 Ind. Cas. 595

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

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for enhancement of rent of a tenure. Defendants proved payment of rent at the same rate for a period of 20 years before the institution of the suit and the learned Subordinate Judge held that a presumption arose u/s 50(2) of the Bengal Tenancy Act that the rent was being paid at that rate from the time of the Permanent Settlement. Plaintiff produced a kabuliyat of the year 1260, corresponding to 1853, and relied upon it as showing that the tenants had agreed to pay enhancement of rent. It appears that there were originally four separated tenures which were amalgamated into one by the kabuliyat of 1853. The main question for Our consideration is whether there was the creation of a new tenancy under the kabuliyat or merely a recognition of the previously existing tenures. The learned Subordinate Judge was of opinion that there was no new tenancy created by the kabuliyat, although the tenant expressly stipulated to pay enhanced rent. He relied upon the case of Bisseswar Ray Chowdhry v. Rajendra Kumar Singha 25 Ind. Cas. 228 : 18 C.W.N. 949 in support of the proposition that, notwithstanding that the kabuliyat showed a variation of rent, it was merely a recognition of a previously existing tenure. The judgment in that case, however, shows that that was not so. The learned Chief Justice, in referring to the kabuliyat in that case, observes: The true meaning of this document has been the subject of considerable discussion before us, but this at least emerges clearly from the discussion that the document is the recognition of a previously existing interest and not the creation of a new one." There is nothing to show that the rent was a variable one or that the tenant had agreed

to pay enhanced rent in that case. In the present case the kabuliyat expressly states that enhanced rent would be paid according to the rate of enhancement in the village. Then, again, there is no suggestion that the other incidents of the tenure as mentioned in the kabuliyat were the incidents of the four original tenures. That being so, we think, upon a proper construction of the kabuliyat, that it created a new tenancy although the four original tenures were amalgamated into one, and that if there was a new tenancy created in the year 1853, the presumption u/s 50 (2) of the Bengal Tenancy Act is rebutted. The result is that the decrees of the Courts below are set aside and the case is sent back to the Court of first instance in order that the question of the amount of enhancement may be gone into. Costs will abide the result.