

(1947) 01 CAL CK 0001**Calcutta High Court****Case No:** None

S.K. Dalil

APPELLANT

Vs

Radha Nath Pal and Others

RESPONDENT

Date of Decision: Jan. 8, 1947**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 26F, 3(17)

Citation: AIR 1947 Cal 367**Hon'ble Judges:** B.K. Mukherjea, J; Amiruddin Ahmad, J**Bench:** Full Bench

Judgement

B.K. Mukherjea, J.

This rule arises out of an application made by the opposite parties for pre-emption u/s 26F, Bengal Tenancy Act. The petitioner before us is the purchaser of a portion of an occupancy holding and his purchase is dated 14-6-1942. The opposite parties presented an application for pre-emption on 16-2-1944, alleging that they were co-sharer tenants and hence entitled to preempt, under the provisions of that section. The whole controversy centres round the point as to whether the opposite parties are really co-sharer tenants and hence are entitled to claim pre-emption u/s 26F, Bengal Tenancy Act. The trial Court answered this question in the negative and the appellate Court has decided in favour of the opposite parties and it is against this order that the present rule has been obtained.

2. Now, the opposite parties claim to be co-sharers in the tenancy on the basis of a purchase of a portion of the occupancy holding made by them on 80-3-1922, that is to say, before the passing of the Bengal Tenancy Amendment Act of the year 1928. We have no hesitation in holding that an unrecognised purchaser of a share of an occupancy holding before the Bengal Tenancy Amendment Act of 1928, is not a tenant and accordingly has no locus standi to maintain an application for preemption u/s 26F, Bengal Tenancy Act. This view has been taken by Edgley J. in Abdul Majid v. Altab Ali 27 AIR 1940 Cal. 348 and we are in entire agreement with the

reasons given by the learned Judge in support of his decision. An unrecognised transferee of a portion of a non-occupancy holding is indeed entitled to remain in possession of the land and cannot be ejected by the landlord so long as the original tenant does not abandon the land but the title which he enjoys is a mere possessory title and his protection from eviction is based not upon the ground that he becomes a tenant with regard to the portion purchased by him but because the landlord is not entitled to re-enter unless there is an abandonment of the whole holding. Of course, the transferee becomes a tenant as soon as he is recognised by the landlord, but the question is if he is recognised not by the entire body of landlords but only by some of them, would he acquire the status of a tenant within the meaning of the definition given in the Bengal Tenancy Act? Henderson J., has answered this question in the affirmative in [Altab Ali Bande Ali Vs. Abdul Majid and Others](#), which was a sequel to the case decided by Edgley J. referred to above. The view taken by the learned Judge does not seem to us to be right. u/s 3(17), Bengal Tenancy Act, a "tenant" means a person who holds a land under another person and is liable to pay rent for that land to that person. The definition shows that in order to be a tenant the man must hold land either under one person or under a group of persons and his liability to pay rent must be in relation to that person or the group of persons. The position cannot be maintained that he is a trespasser with regard to some of the landlords and a tenant with regard to the rest. Of course, if there is a splitting up of the holding, an independent tenancy may come into existence but so long as the holding remains one integral whole, it cannot be argued that he occupies the position of a tenant with regard to some of the landlords and not with regard to the rest. In the case before us, the trial Court held upon the evidence that there is no recognition by the landlord meaning thereby the entire body of landlords. The lower appellate Court has not come to any definite finding on this point. It has simply remarked that the question of recognition does not at all arise having regard to the decision of Henderson J. reported in [Amjad Talukdar Vs. Rohini Kanta Bhattacharja and Others](#), . We are unable to see how that decision is of any assistance to the opposite parties in the present case and as a matter of fact it has been conceded by the learned advocate for the opposite parties that the learned lower appellate Court has really misconceived the point.

3. The result, therefore, is that we make the rule absolute, set aside the judgment of the lower appellate Court and send the case back in order that the learned Subordinate Judge might decide on evidence the question as to whether or not there has been a recognition of the purchase by the opposite parties Nos. 1 to 5 by the entire body of landlords either by reason of the rent suit which was filed by the opposite parties or because of other facts and circumstances transpiring in evidence in this case.

4. The case is accordingly remanded for rehearing in the light of the observations made above. If the lower appellate Court finds that there has been a recognition by the entire body of landlords the claim for pre-emption will be allowed, otherwise it

will be dismissed. If necessary the lower appellate Court will be entitled to allow the parties to adduce fresh evidence. We, make no order as to costs.

Amiruddin Ahmad, J.

I agree.