

(1917) 02 CAL CK 0001**Calcutta High Court****Case No:** None

Azimuddin Choudhuri and
Others

APPELLANT**Vs**

Peer Mahomed Bepari and
Others

RESPONDENT**Date of Decision:** Feb. 7, 1917**Citation:** 39 Ind. Cas. 137**Hon'ble Judges:** Richardson, J; Fletcher, J**Bench:** Division Bench**Judgement**

Fletcher, J.

This is an appeal by the plaintiffs against a judgment of the learned Subordinate Judge of Rungpore, dated the 15th March 1915, affirming the decision of the Munsif at Gaibandha. The plaintiffs who are raiyats sued to recover possession of 15 bighas of land from the defendants. The case has been disposed of in the lower Courts on the basis of a kabuliyat with a certain, what has been called, option or covenant in favour of the tenants, under which it is said that the tenants are entitled either to have a new settlement or to lease the land. The learned Judge of the lower Appellate Court has found that the terms of this option or Covenant in the lease are not certain or defined either as regards the new term to be granted or the new rent to be payable. He has, therefore, held that the defendants are not liable to be ejected on that ground. That view, I think, is clearly wrong. Once it is held that the so called option or covenant for the grant of a further lease is uncertain both as regards the term to be granted and the future rent, there is no contract which the tenants can enforce. This is not one of those cases where it was held on the construction of the covenant that the covenant for granting the new lease meant that the terms of the new lease were to be the same as the old lease. It is agreed that that is not the meaning. The view taken by the learned Judge, therefore, on the point that the tenants had a right tinder the lease to have a new term was not well founded.

2. There was another point raised and that is that the defendants had held over for three years after the expiry of the term and, therefore, at any rate, they were not liable to be ejected without notice. The learned Subordinate Judge in the lower Appellate Court has made this finding in that part of the case: There is nothing to show that the defendants have been recognized as tenants after the expiry of the lease." We have been referred to certain rent receipts that have been put in by the defendants in the course of the trial. The documents were not referred to specifically by either Court in its judgement. But before But the documents have been gone into and it is admitted that there is nothing on the face of those rent receipts to show that any portion of the rent for the years 1318 and 1319 was received by or for the plaintiffs in this suit. There Seems, therefore, to be ample evidence on which the Judge was warranted in finding that there was nothing to show that the defendants had been recognized as tenants after the expiry of the lease. In that view the plaintiffs are entitled to recover possession of the land.

3. The appeal must, therefore, be allowed and the judgment of the Courts below set aside. The case having been decided only on the preliminary point on the fifth issue, it must go back to the Court of first instance for re-trial on the merits on the other issues, Costs will abide the result of the rehearing.

Richardson, J.

3. I agree.