

(1920) 07 CAL CK 0007**Calcutta High Court****Case No:** None

Raj Kumar Das

APPELLANT

Vs

Panchkori Taluqdar

RESPONDENT

Date of Decision: July 13, 1920**Citation:** 60 Ind. Cas. 507**Hon'ble Judges:** Teunon, J; Newbould, J**Bench:** Division Bench**Judgement**

1. This appeal arises out of a suit brought to eject an under raiyat after notice. The findings of fact arrived at by the Court of first appeal are as follows. Plaintiff is a raiyat. He granted to the defendant a lease which purported to be a lease in perpetuity. He brings this suit in ejectment after service of a sufficient notice to quit under the provisions of Section 49(a) of the Bengal Tenancy Act. On the authority of, amongst other cases, the case of Jarip Khan v. Durfa Bewa 15 Ind. Cas. 76 : 16 C.L.J. 144 : 17 C.W.N. 59 and the case of Gonesh Mondal v. Thanda Namasundrani (1824) 2 Bing. 76 : 27 R.R. 549 : 9 Moore 166 : 2 L.J.C.P. 134 : 130 E.R. 233 it must be held that the lease in question, having been granted and registered in contravention of the provisions of Section 85(2) of the Bengal Tenancy Act, is inadmissible in evidence. It is contended before us that the plaintiff a raiyat is precluded from questioning the validity of this lease by, reason of the doctrine of estoppel, but here the finding of fact is that there was no misrepresentation by the plaintiff as to the extent of his interest or as to his status as raiyat. The doctrine of estoppel, therefore, has no application.

2. The appellants' Pleader next seeks to rely upon the proof of his client's possession. No doubt, that possession, apart from the lease, would be sufficient to prove his tenancy. However, that is not sufficient to prove his permanent lease. Moreover, by the service of the notice to quit the tenancy has terminated.

3. It follows that the defendant must submit to the decree made against him for possession. The appeal is, therefore, dismissed with costs.