

**(1920) 01 CAL CK 0001**

**Calcutta High Court**

**Case No:** None

Kailash Nath Roy Choudhury

APPELLANT

Vs

Kamakhya Charan  
Chattopadhyaya and Others

RESPONDENT

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**Date of Decision:** Jan. 23, 1920

**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 153

**Citation:** 55 Ind. Cas. 500

**Hon'ble Judges:** Walmsley, J

**Bench:** Single Bench

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### **Judgement**

Walmsley, J.

This appeal arises out of a rent suit. A preliminary objection is taken on behalf of the plaintiffs that the appeal is barred by Section 153, Bengal Tenancy Act. I think that this contention is right; but I cannot state my reasons for so thinking without mentioning the facts necessary for the point raised by the appellant, So I do not rest my decision only upon Section 153, The facts are as follows: There is an estate No. 3197 of the Backergunge Collectorate. The proprietors thereof sold a piece of land measuring 3 Kanis and odd comprised in the estate to the predecessor of the defendant in March 1857. Some years later they granted a putni of the estate to the plaintiffs' predecessors. By the kobala in favour of the defendant's predecessor it was agreed that the defendant should pay Rs. 3 and odd annually as Sadar Jama to the proprietor; and it appears that the defendant paid this sum annually to the proprietor and afterwards to the putnidar. It is the putnidar who now sues to recover that sum as rent, and the defendant's contention is that he is really the proprietor of the land and the money which he pays to the plaintiffs is not rent but his share of the Government revenue.

2. The learned Subordinate Judge held that the relationship of landlord and tenant existed between the plaintiffs and the defendant. He examined the kobala which is

Exhibit A, and he gave his reasons for the view. He pointed out that the Sadar Jama which the defendant's predecessor was directed to pay was not proportionate to the area of the land bought. It was evidently fixed as Re. 1 per Kani. Secondly, he pointed out that the parties had behaved for something like 50 years or more as though the sum annually payable by the defendant was payable as rent of the putnidar. Next, he pointed out that twice over when the Record of Rights was prepared the defendant has been shown as tenant under the putnidar. The learned Vakil who appears for the plaintiffs in this Court has further pointed out that the kobala ends with a sentence which is more consistent with a lease than with a conveyance. It runs as follows: "You shall enjoy and possess...by getting; your name recorded in the Huzur Malik on payment of Sadar rent." This is a sentence which seems out of place in a deed of conveyance. It appears to me that the learned Subordinate Judge was right in taking the view that he did and, therefore, on the merits I hold that the appeal must be dismissed with costs.