

Ram Dhan Dhar Vs Sharup Chandra Sen and Others

None

Court: Calcutta High Court

Date of Decision: Sept. 5, 1912

Acts Referred:

Bengal Tenancy Act, 1885 " Section 11, 12

Citation: 18 Ind. Cas. 479

Hon'ble Judges: Stephen, J; Richardson, J

Bench: Division Bench

Judgement

1. The plaintiff in this case sues for a declaration that he is not the tenant of defendant No. 1 in respect of a certain taluk, that he has no right to the

taluk and is not liable to pay rent for it. The facts seem to be simple. The taluk is a tenure to which the Bengal Tenancy Act applies. The plaintiff

bought a share of it many years ago in execution of a decree, acting on behalf of himself and his brothers. Subsequently, a partition was effected

between the brothers and the share in question fell to the share of the plaintiff's brother, Ram Das, predecessor-in-title to defendant No. 2.

2. The only question we have to decide is whether the effect of this partition was to free the plaintiff from his liability for rent to the zemindar. We

are of opinion that it did. As the transfer by the plaintiff was on partition, which implies a grant or exchange, Section 12 of the Bengal Tenancy Act,

the operation of which is confined to transfer by sale, gift or mortgage, does not apply. Consequently, the share in the taluk was by Section 11 of

the same Act capable of being transferred in the same manner as other Immovable property, without the necessity of the registration and notice

required by Section 12. According to the decision in Promotha Nath Mitter v. Kali Prasunna Chowdhry 28 AC. 744 it seems that Section 108(j)

of the Transfer of Property Act applies to the taluk, the-subject matter of this suit, but it does not apply to this case except in so far as it makes the

plaintiff capable of transferring the tenure, because while it provides that the liabilities of a lessee to his lessor do not cease on a transfer, it does not

touch the case of the assignee of the lessee. We are of opinion, however, that the present case, which is one of transfer by the assignee of a lessee,

is covered by principle and this seems to be the view entertained by the Court in Prosonna Coomar Singha v. Ram Coomar Ghose 16 AC. 640

and R.D. Mehta v. Gadadhur Rai 37 AC. 683; 14 C.W.N. 831; 7 Ind. Cas. 198; 12 C.J.256. A previous decision by this Court on the present

case seems to proceed on a contrary view of the law. That decision, however, is based on a view of the case confined to the operation of the

Bengal Tenancy Act. It does not constitute res judicata, and we cannot attribute to the mention of the "ordinary law" the meaning that it is now

sought to attach to it. We accordingly allow the appeal, and set aside the judgment of the lower Appellate Court. The suit must be decreed in the

plaintiff's favour, and he is entitled to a declaration that the relation of the landlord and tenant does not exist between him and defendant No. 1 and

that he is not liable for the rent of the share of the taluk in question or for rent since the time when defendant No. 1 became aware of the partition.

The plaintiff is entitled to his costs in this Court and the Courts below.