

## His Highness Maharaja Birendra Kishore Manikya Bahadur Vs Jahiruddin and Others

**Court:** Calcutta High Court

**Date of Decision:** Nov. 18, 1925

**Acts Referred:** Bengal Tenancy Act, 1885 â€” Section 105, 50

**Citation:** 94 Ind. Cas. 26

**Hon'ble Judges:** Panton, J; Ewart Greaves, J

**Bench:** Division Bench

### Judgement

Ewart Greaves, J.

In this appeal the plaintiff is the appellant. The suit was brought for settlement of fair and equitable rent u/s 105 of the

Bengal Tenancy Act. The defendants resisted the enhancement on the plea that their holding was a mokarrari holding and that they are entitled to

the presumption raised by Section 50 of the Bengal Tenancy Act. The appellant contends that the defendants are not entitled to any such

presumption having regard to the existence of a kabuliyat in respect of the land in suit dated in the year 1878. This document creates in favour of

the defendants" predecessors-in-interest a lease for a term of 6 years in respect of jote and basat therein described. Both the Courts below have

held that this document was merely confirmatory of an existing tenancy and, therefore, the presumption u/s 50 is not thereby displaced. We think,

however, that this is not correct. As has been pointed out "in the case of Ramrutno Sircar v. Chunder Mookhee Debea 2 W.R. Act. X Rul. 74

where you have a temporary" kabuliyat for a term of years the presumption of a fixed tenure from the time of the Permanent Settlement goes. The

dowl-kabuliyat before us creates in favour of the defendants" predecessors a term of 6 years. We think, therefore, that this is inconsistent with the

existence of a tenancy at a fixed rate from the time of the Permanent Settlement. It is true that the entry in the Record of Rights is in favour of the

defendants for in that document the tenancy is said to be mokarrari. But this presumption, we think, has been rebutted by the kabuliyat to? which

we have referred. We, think, therefore, that the Courts below were wrong in holding that the kabuliyat of 1878 was merely a confirmatory

document and being as it is for a term we think that it rebuts the presumption of the existence of a tenancy at a fixed rate from the time of the

Permanent Settlement.

2. In the result, we set aside the decree of the Special Judge of the 24th March 1922 and send back the case to the Assistant Settlement Officer in

order that a fair and equitable rent may be fixed for the holdings in suit.

3. As the respondents did not appear, we make no order as to costs in this appeal.

Panton, J.

4. I agree.