

**(1934) 11 CAL CK 0002**

**Calcutta High Court**

**Case No:** None

Dinanath Chandra and Others

APPELLANT

Vs

Sudhanyamoni Dasi and Others

RESPONDENT

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**Date of Decision:** Nov. 19, 1934

**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 7

**Citation:** AIR 1935 Cal 458

**Hon'ble Judges:** Nasim Ali, J

**Bench:** Division Bench

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### **Judgement**

Nasim Ali, J.

These ten appeals arise out of as many suits for enhancement of rent u/s 7, Bengal Tenancy Act. The plaintiff, that is the landlord, brought these suits against the tenant defendants on the allegation that their rent was liable to be enhanced in view of the provisions of Section 7, Bengal Tenancy Act. In the finally published Record of Rights the tenant defendants' status was recorded as that of tenure-holders. The defendants however in their defence took the plea that they were not tenure holders but were raiyats and consequently the provisions of Section 7, Bengal Tenancy Act, were not applicable. The defendants also stated that the amount of enhancement claimed was excessive and unfair.

2. The Courts below have concurrently rejected the defence of the tenants to the effect that they were raiyats. As regards the amount of enhancement, the trial Court on a consideration of the evidence in each individual case allowed to the landlord only 25 per cent of the net profit in one case and 50 per cent the net profit in the other cases. Appeals were thereafter taken by the tenants to the lower appellate Court. No cross-objections challenging the amount of enhancement granted by the trial Court were however filed by the landlord. The learned Judge in appeal however varied the decrees of the trial Court by allowing 60 per cent of the net profit to the landlord. The present appeals are therefore by the tenant defendants.

3. The first point urged in support of the appeals by the learned advocate for the tenant defendants is that the finding of the Courts below on the question of status is vitiated by error of law. Inasmuch as the learned Judge based his finding on certain circumstances and facts which are not relevant evidence at all. It is argued by the learned advocate that the learned Judge should not have taken into consideration the fact that the tenants belonged to Bhadrалоке class. It is further argued that the learned Judge fell into an error in thinking that khas possession of the land by the tenants now is not material evidence for the purpose of finding out the original purpose for which the tenancies were created. These contentions have no substance. The Record of Rights clearly shows these tenants to be tenure holders. The onus was upon them to rebut this presumption. In order to rebut the presumption, the tenants wanted to rely upon certain facts, one of the facts being that the lands are now in the khas possession of the tenants themselves. The learned Judge was perfectly justified in holding that the present possession through Bhagidars is not inconsistent with their status being that of tenure holders. I am therefore of opinion that the finding of the Courts below on the question of status is not based on any inadmissible or irrelevant evidence and is therefore not vitiated by any error of law.

4. The next point urged in support of the appeals is that the learned Judge had no jurisdiction under Order 41, Rule 33, Civil P. C, to award further enhancement to the landlord in the absence of any appeals or cross-objections on the part of the landlord claiming further enhancement. In my judgment this contention must prevail. The language used in Order 41, Rule 33, Civil P. C, is no doubt very wide but as has been pointed out by Jenkins, C.J., in the case of Gangadhar Muradi v. Banabashi Padihari 1914 Cal 722 that

the power contained in Rule 33 should be limited to those cases where, as the result of the appellate Court's interference with the decree in favour of the appellants further interference is required in order to adjust the rights of the parties in accordance with justice, equity and good conscience.

5. It has also been pointed out by this Court in the case of Abja Majhi v. Intu Bepari 1916 Cal 250 that

Rule 33, Order 41 of the Code should not be applied so as to enable a party litigant to ignore the other provisions of the Code or the provisions of statutes like those which relate to limitation or payment of court-fees: see also in this connexion the case of Akimannessa Bibi v. Bepin Behari Mitter 1916 Cal 261.

6. The learned advocate for the respondent however placed reliance upon a decision of the Judicial Committee in the case of Tricomdas Cooverji Bhoja v. Gopinath Jiu Thakur 1916 PC 182. The facts of the case however are entirely different from the facts of the present case. My conclusion therefore is that the learned Judge had no jurisdiction to grant further enhancement in favour of the landlord as the latter did

not want further enhancement either by filing independent appeals or by filing cross-objections.

7. The result is that the judgment and decrees of the lower appellate Court, so far as these appeals are concerned, are varied in the manner indicated above. Parties will bear their own costs throughout. The cross-objections are not pressed and are dismissed without costs.