

(1925) 11 CAL CK 0006**Calcutta High Court****Case No:** None

Ismail Pramanik

APPELLANT

Vs

Khedir Pramanik

RESPONDENT

Date of Decision: Nov. 13, 1925**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 48

Citation: AIR 1926 Cal 986**Hon'ble Judges:** Suhrawardy, J; Mukerji, J**Bench:** Full Bench**Judgement**

Mukerji, J.

The plaintiff sued the defendant to recover rent for three pakhis of land for the years 1326 to 1328 at the rate of Rs. 20 per year together with damages. The defendant contended that the plaintiff is not entitled to recover rent at more than Rs. 3-6 annas per year by reason of the provisions of Section 48 of the Bengal Tenancy Act. The Courts below have upheld the defendant's contention as to the applicability of Section 48 of the Bengal Tenancy Act and have given the plaintiff a decree at the rate of Rs. 4-2-0 per year; that is to say, at the rate which the plaintiff is supposed to pay to his landlord together with 50 per cent. thereof. The plaintiff has appealed.

2. The defendant along with some other persons held an occupancy holding consisting of six pakhis of land bearing a rental of Rs. 11. The defendant, on the 3rd Augrahayan 1322 B.S., executed a usufructuary mortgage in favour of the plaintiff in respect of three pakhis of land out of this holding, alleging the same to constitute his entire jote and as bearing a rental of Rs. 2-12-0 per year. The mortgage was for a period of 60 years; the amount of principal secured was Rs. 249; the same, as also the interest thereon, was stipulated to be recovered from the usufruct; and possession of the said three pakhis of land was to be with the plaintiff. On the next day, that is to say, the 4th Augrahayan 1322, the defendant executed a kabuliyat by

which he took settlement of the said three pakhis of land from the plaintiff for a period of nine years stipulating to pay a rent of Rs. 20 per year. The defendant's contention, which has been upheld by the Courts below, is that by these transactions the defendant has become an under-raiyat. The question, before us, is whether his contention is well founded.

3. To attract the operation of Section 48 of the Bengal Tenancy Act it must be established that the defendant is an under-raiyat; that is to say, that he is a tenant who holds immediately or mediately under a raiyat. The Courts below are of opinion that the plaintiff, under whom the defendant now holds, has by the usufructuary mortgage become a raiyat, and that under the kabuliyat the defendant has become an under-raiyat.

4. In my opinion the governing intention of the parties is obvious. The mortgage created the relationship as between a debtor and a creditor; the plaintiff was to enter into possession and take the profits in lieu of principal and interest and subject to the payment of the proprietor's rent. There is a stipulation in the mortgage deed that the plaintiff would pay the said rent and take dakhilas in the name of the defendant, showing payment of the rent through the plaintiff. By the mortgage, therefore, the relationship as between the proprietor and the defendant was left untouched. By the kabuliyat a tenancy was created, the real object of which was to let the defendant remain in possession and pay Rs. 20 per year in lieu of the usufruct. No relationship of landlord and tenant as between the proprietor and the plaintiff came into existence by this transaction. Assuming, however, that the plaintiff acquired a status intermediate between the proprietor and the defendant, he cannot be held to have acquired the incidents which would be requisite to constitute him a raiyat under the Bengal Tenancy Act. The defendant holding under the plaintiff by virtue of the kabuliyat, therefore, is not an under-raiyat. The view I take receives support from the observations of the learned Judges in the case of Tilakhdari Singh Vs. Chaturgan Bind and Others, wherein the facts were precisely similar.

5. The appeal, therefore, should be allowed, the judgments of the Courts below set aside and a decree entered in the plaintiff's favour at the rate of rent, cesses and damages as claimed in the plaint. The appellant will be entitled to his costs in all the Courts.

Suhrawardy, J.

6. I agree.