

(1919) 02 CAL CK 0006

Calcutta High Court

Case No: None

Prohlad Chandra Shaha

APPELLANT

Vs

Ambica Charan Shaha

Ambica Charan Shaha Vs Prohlad
Chandra Shaha

RESPONDENT

Date of Decision: Feb. 27, 1919

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 85

Citation: AIR 1919 Cal 92 : 50 Ind. Cas. 514

Hon'ble Judges: Panton, J; N.R. Chatterjea, J

Bench: Division Bench

Judgement

1. This appeal arises out of a suit by an under raiyat to recover possession of the lands included in his under-raiyati lease as against his landlord.
2. The lease was for a term exceeding nine years and the sub-letting, therefore, was in contravention of the provisions of Section 85.
3. The Court of first instance found that the plaintiff was not in possession of the property as sub-lessee and the lower Appellate Court, though it does not come to a specific finding, generally agrees with the first Court upon the present question.
4. That being so, the plaintiff's claim must be restricted to the claim upon the lease registered in contravention of the provisions of Section 85, Clause (2). It, therefore, falls within the class of decisions of which Jarip Khan v. Durfa Bewa 15 Ind. Cas. 476 : 17 C.W.N. 59 : 16 C.L.J. 144. is a type and not within the class of cases where an under-raiyat being in possession of the property as sub-lessee sues to recover possession on being dispossessed.
5. It may be pointed out that the learned Subordinate Judge, although he disallowed the claim for possession of the lands, gave the plaintiff a decree for refund of Rs.

100 which had been paid by the plaintiff to the landlord defendant on account of the under-raiyati lease.

5. The appeal fails and is dismissed. Each party to bear his own costs in all Courts.

No. 309 or 1917.

6. The appellant does not wish to proceed with the appeal. The appeal is accordingly dismissed. Each party to bear his own costs in all Courts.