

(1919) 04 CAL CK 0004

Calcutta High Court

Case No: None

Muralidhar Aditya

APPELLANT

Vs

Radha Mohan Hazra and
Another

RESPONDENT

Date of Decision: April 9, 1919

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 115, 50

Citation: 51 Ind. Cas. 552

Hon'ble Judges: Shamsul Huda, J; John Woodroffe, J

Bench: Division Bench

Judgement

Woodroffe, J.

In these two appeals it has been contended that the Courts below should have held that the Record of Rights having been finally published under Chapter X of the Bengal Tenancy Act in respect of the tenancy in suit, the defendants were barred by the provisions of Section 115 of that Act from claiming the presumption which is mentioned in Section 50 of the same Act.

2. The learned District Judge had based his decision upon the case of Maharaja Radha Kishore Manikya Bahadur v. Umed Ali (12 C.W.N. 904). But having regard to the Full Bench decision in Pirthi Chand Lal Chowdhry v. Basarat Ali 3 Ind Cas. 449 (F.B.) ; 37 C. 30 ; 13 C.W.N. 1149 ; 10 C.L.J. 343 and to the decision which is reported as Harihar Persad Bajpai v. Ajub Misir (22 Ind. Cas. 604 ; 45 C. 980), we think that the learned Judge's view of the law cannot be supported, and we, therefore, set aside the judgment and decree and remit the case to him for re-hearing. On the rehearing the matter to which the learned Judge will direct his attention is the third issue, which deals with the alleged rise in the price of the staple food crops, the claim for enhancement on that account and the amount of enhancement which under the circumstances is to be allowed.

3. The appellant is entitled to his costs in the two appeals before us, but having regard to the fact that the two appeals raised the same question, we think that there should be only one hearing fee.

4. All other costs both before and after remand will follow the decision on the remand, The finding of the lower Appellate Court on issue No. 1 as to there being one consolidated jama will stand.

Shamsul Hhda, J.

5. I agree.