
(1868) 12 CAL CK 0005

Calcutta High Court

Case No: Special Appeal No. 1760 of 1868

Sridhar Nandi

APPELLANT

Vs

Braja Nath Kundu
Chowdry and Others

RESPONDENT

Date of Decision: Dec. 3, 1868

Judgement

E. Jackson, J.

This appeal only refers to certain plots of land which the defendant has alleged to be lakhiraj, and for which he, therefore, contends that the plaintiff's suit for enhancement of rent should be dismissed. In support of his plea that the land is lakhiraj, he has put in his taidad and kabalas; the Judge finds that these are not even prima facie evidence of a lakhiraj title, that the onus of proving that these lands are lakhiraj is upon the defendant, and that it is for him to prove that these lands are not included within the tenure which the defendant held from the plaintiff. To each of these points the special appeal relates. We are of opinion, as we have already stated in several other decisions, that the Judge is wrong on all three points. It is not for the defendant to show that this land is not included within the mal tenure; the onus is not upon the defendant to prove that these lands are lakhiraj; the onus is upon the plaintiff, as it has been frequently stated in numerous decisions of this Court; the onus is on the plaintiff to prove that these lands are mal lands, and that they have been paying rent. At the same time, to prevent the ryots from merely setting up this plea without any evidence at all that they hold any lakhiraj lands, the Courts have been accustomed to require the defendants to show, by some prima facie evidence, that they do hold lakhiraj lands. In this case the defendant has put in kabalas and extracts from the lakhiraj register, which are such sufficient prima facie evidence as is required. We think the Judge is wrong in saying that it is not prima facie evidence; and it is evident from the reasons that the Judge gives for so holding, that he makes no distinction between prima facie evidence and complete and conclusive evidence.

2. We are obliged, therefore, to reverse the decision of the Judge in this suit, in so far as it affects the lands which the defendant claims as lakhiraj; and as it appears from the decision of the Judge that the plaintiff has not proved that these lands are mal, we decree

this appeal, and dismiss the plaintiff's suit as far as it refers to these lands.