
AIR 1936 Cal 565 : 163 Ind. Cas. 406

Calcutta High Court

Case No: None

Pulin Chandra Daw and
Others

APPELLANT

Vs

Abu Bakkar Naskar

RESPONDENT

Date of Decision: Jan. 13, 1936

Acts Referred:

Bengal Tenancy Act, 1885 – Section 178, 182

Citation: AIR 1936 Cal 565 : 163 Ind. Cas. 406

Hon'ble Judges: Nasim Ali, J; Henderson, J

Bench: Full Bench

Judgement

Nasim Ali, J.

This appeal arises out of a suit for ejectment. Plaintiff's case is that the defendant held the disputed land as a tenant under

them on the basis of a registered kabuliyat executed by him in favour of their predecessor on 27th July 1915, that a notice to quit was served on

him in accordance with the term of the kabulyat calling upon him to vacate the land on the 1st of Baisakh 1336, B.S. but he has failed to comply

with the notice. The defence of the defendant is that he is a settled raiyat of the village in which the disputed land lies and that he has acquired an

occupancy right in the disputed land under the provision of Section 182, Bengal Tenancy Act, as it is his homestead. The Courts below have held

that the defendant has acquired occupancy right in the disputed land. They have accordingly dismissed the suit. Hence the second appeal by the

plaintiffs.

2. Now it appears that the defendant took settlement of the disputed homestead from the plaintiff's predecessor for residential purposes by a

kabuliyat in 1915. By this kabuliyat a tenancy at will liable to be determined by a notice to quit was created. It appears that the defendant was a

cultivator at the time of the kabuliyat. It is not clear, however, whether he was a raiyat at that time. It has been found by the lower appellate Court

that he acquired a raiyati in 1326 B.S. and became occupancy raiyat in respect of some agricultural lands of the village before the service of notice.

Dr. Basak appearing on behalf of the plaintiffs contends that subsequent acquisition of the status of an occupancy raiyat by the tenant cannot take

away the contractual right of the landlord to eject the tenant. Now, by Sub-section (3) (a) of Section 178, Bengal Tenancy Act, nothing in any

contract made between a landlord and a tenant after the passing of the Act shall prevent a raiyat from acquiring, in accordance with this Act, an

occupancy right in land. The right of the plaintiffs to eject the defendant from his homestead arising out of the kabuliyat of 1915 cannot therefore

prevent the defendant from acquiring occupancy right in the homestead if he is entitled to acquire occupancy right in it in accordance with the

provisions of the Bengal Tenancy Act of 1885. Section 182 of the Act is in these terms:

3. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat the incidents of the tenancy of his homestead shall be

regulated by local custom or usage and subject to local custom or usage by the provisions of this Act applicable to land held by a raiyat.

4. If a raiyat's homestead is a part of his agricultural holding there is no difficulty as there is only one tenancy and his rights in the homestead are the

same as his rights in the holding itself. Where however, as in the present case, the homestead is not a part of his agricultural holding the incidents of

his tenancy or the homestead are regulated by the provisions of the Bengal Tenancy Act and not by the provisions of the Transfer of Property Act

in the absence of any local custom or usage. The requirements of Section 182, Bengal Tenancy Act, are: (1) that the tenant of the homestead is a

raiyat; (2) that he holds the homestead otherwise) than as a part of his holding.

5. Both the elements are present in this case. Dr. Basak however contends that in order to determine the incidents of the defendant's tenancy of

the homestead the Court has to look to the contract which created that tenancy and it is not permissible to take into consideration any subsequent

events which the landlords did not contemplate at the time when the tenancy was created and over which they had no control. It is difficult to

accept this contention in view of the general terms of the provisions of Section 182. The word ""holds"" in the section seems to point to the time

when the dispute about the incidents of the tenancy of the homestead arises.

The rights derived from a contract have been abrogated with regard to the homestead land of a raiyat without any exception as to pre-existing

contracts under the provisions of the Bengal Tenancy Act: See Sukh Lal v. Prosanna Kumar 1926 Cal 1199

6. As a protection to cultivating tenants the section is enacted, so that he may not be turned out of his homestead. I am not therefore prepared to

hold that the decision of the Courts below is wrong. The appeal is accordingly dismissed with costs.

Henderson, J.

7. I agree.