

(1924) 07 CAL CK 0050

Calcutta High Court

Case No: None

Rahimuddin Mollah and Others

APPELLANT

Vs

Nirodbarani Debi

RESPONDENT

Date of Decision: July 4, 1924

Citation: 84 Ind. Cas. 685

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

Bench: Single Bench

Judgement

N.R. Chatterjea, J.

This Rule is directed against a decree passed by a Court of Small Causes in a suit for recovery of price of half the produce of land against the defendant as a bargadar.

2. The only contention raised is that the Small Cause Court had no jurisdiction to try a suit for recovery of a share of the produce payable by a bargadar which is a suit for rent. This question was not raised by the defendant in the Court below and it has not been noticed in the judgment of that Court.

3. It is, however, contended by the learned Vakil for the petitioner that the plaintiff herself in her plaint states that the defendant was entered in the Record of Rights as bargadar and in possession as bargadar that these go to show that the defendant had some sort of a tenancy rights and that unless he had such a right he would not be recorded in the Record of Rights.

4. It appears that the defendant pleaded in his written statement (in more places than one) that he was not a bargadar, but that he held at a money rent.

5. This case comes from the District of pabna, and in the Order of Reference in the case of Kade Mandal v. Ahadali Molla 6 Ind. Cas. 594 : 14 C.W.N. 620 which also came from the same district it is stated: "The term bargadar in this District is ordinarily understood to mean a cultivator, who under the terms of his contract, is a servant or a labourer under the holder of land. The plaintiff holds the land as a

tenant. The defendant is a bargadar under the plaintiff. If there was anything in the terms of the contract between the parties which would make the defendant a tenant, it was the duty of the defendant to prove those terms.

6. The defendant, however, though he denied that he was a bargadar, never set up that bargadar was a tenant.

7. It is contended by the learned Vakil for the petitioner that the only question raised in the suit was whether the plaintiff was entitled to half the produce of the land or money-rent, and the contention that a bargadar is a tenant was not, therefore, raised in the written statement, But the fact that it was not raised seems to be due to the fact that bargadar is a term which is well understood in the District as not applicable to a tenant. In any case the question (which involves a consideration of the terms of the contract between the parties and other matters) not having been raised in the Court below and no evidence having been gone into on the point should not be allowed to be raised here in revision.

8. In these circumstances this Rule is discharged. I make no order as to costs.