

(1925) 05 CAL CK 0046

Calcutta High Court

Case No: None

Purusottam Mahesri and Others

APPELLANT

Vs

Panchanan Mazumdar and
OthersRESPONDENT

Date of Decision: May 18, 1925**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 182
- Transfer of Property Act, 1882 - Section 111

Citation: AIR 1926 Cal 373**Hon'ble Judges:** Cuming, J; Chakravarti, J**Bench:** Full Bench

Judgement

Cuming, J.

In the suit out of which this appeal has arisen the plaintiffs sued to eject the defendants u/s 111 of the Transfer of Property Act on the ground that their lease had expired. The facts of the case are these: the defendants first of all took a lease of some 5 kanis of land in 1310 in Lalmanirhat Bandar for a term of 5 years for the purpose of establishing a shop on it. The defendants then took one additional kani of land at a total rental of Rs. 69 per annum for 6 kanis of land and there was a fresh lease for 5 years. At the expiry of the term the plaintiffs demanded an enhancement of rent and a fresh lease was given for another 5 years from 1322 to 1326 at a rental of Rs. 78 per annum. The defendants executed a kabuliyat in the plaintiffs' favour on the 1st Jaistha 1322. This lease expired in 1326 and the defendants were asked by the plaintiffs to evacuate the land. This they refused to do and hence this suit. The case of the defendants was that they were settled on the land in 1307 as raiyats and that the kabuliyat was merely a confirmatory lease which did not set forth the real purpose for which the lands were taken, that the defendants were governed by the Bengal Tenancy Act being occupancy raiyats and were not liable to be ejected.

2. The first Court held that the lands had been taken for the purpose of a shop and that Section 182 of the Bengal Tenancy Act had no application. In appeal the learned Subordinate Judge held that the defendants had failed to prove their case that they took the land for agricultural purpose in the year 1307. He found that they took the land for the purpose of establishing a shop. He further found that they subsequent to the taking of the land for the shop, had acquired certain other occupancy jotes in the vicinity and hence he held that under the provisions of Section 182 of the Bengal Tenancy Act they must be considered to be holding the lands that had been taken for the purpose of a shop as occupancy raiyats and hence they could not be evicted. The learned Subordinate Judge, in coming to this conclusion, relied upon the case of Bhikariram Bhagat v. Maharaj Bahadur Singh [1915] 43 Cal. 195.

3. Dr. Basak, who has appeared for the appellants, contends that Section 182 has no application to the present case and that the ruling relied upon by the learned Subordinate Judge of the lower appellate Court is clearly distinguishable; for in that case the tenant had already been a raiyat before he took the land for the purpose of a shop and the finding was that the land was taken for a shop and also for cultivating, as a raiyat, other lands using the land in suit as a homestead. The case is clearly distinguishable from the present case. I do not think that the provisions of Section 182 of the Bengal Tenancy Act can be held to apply to the present case. The land in this case was admittedly taken not for the purpose of a homestead from which the defendants were to cultivate their jotes but was taken for the purpose of a shop and is still used for that purpose. It is situated in a part Lalmanirhat Bunder which is a large bazar. The defendants admittedly had another homestead and it would be straining the law if I were to hold that they were holding this land as their homesteads. Their lease shows that it was for the purpose of a shop that the land was taken and had been used for that purpose only. Therefore it cannot be said that the defendants have been holding that land as homestead.

4. In my opinion Section 182 has no application to the present case and this land is governed by the provisions of the Transfer of Property Act and not by the provisions of the Bengal Tenancy Act.

5. In that view the appeal must succeed. The decree of the lower appellate Court is set aside and that of the first Court restored. The appellants will get their costs of this Court as well as of the lower appellate Court.

Chakravarti, J.

6. I agree with my learned brother in the order which he has proposed to make. I wish only to add a few words. The learned advocate for the respondents relied upon the case of Bhikariram Bhagat v. Maharaj Bahadur Singh [1915] 43 Cal. 195 upon which the lower appellate Court also relied. That case is distinguishable from the facts of the present case. The learned Judges in the course of their judgment in the case cited laid down the law in these words: "But supposing that during the first 2 or

3 years during which the defendants merely held, their shop and resided on the disputed land, and held jotes at Nalhati, they could not invoke the aid of Section 182 of the Bengal Tenancy Act, there can be no manner of objection under a long course of rulings of this Court to their claiming the protection of that section after they became agriculturist at Sanko and carried on agriculture from their residence at Sanko which was also used as a shop." Now in the present case the learned Subordinate Judge has found that land was taken for the purpose of establishing a shop and not for the purpose of carrying on agricultural operation as was claimed by the defendants. The learned Judges in the case cited pointed out that the land in that suit was taken primarily for the purpose of carrying on cultivation and the use of it as a shop was only incidental use. In the present case the lease, when it was taken, was clearly one governed by the provisions of the Transfer of Property Act. The main purpose or the only purpose, for which it was let out by the landlords was for the defendants to establish a shop in a bazar. In these circumstances I agree with my learned brother in the judgment just delivered that Section 182 of the Bengal Tenancy Act has no application to this case.