

## Monmotha Nath Kar Vs Probodh Chandra Ratarhi

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**Court:** Calcutta High Court

**Date of Decision:** Aug. 10, 1922

**Acts Referred:**

Bengal Tenancy Act, 1885 " Section 18, 50(2)

**Citation:** AIR 1923 Cal 102 : 73 Ind. Cas. 416

**Hon'ble Judges:** Rankin, J; Asutosh Mookerji, J

**Bench:** Division Bench

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### Judgement

1. This is an appeal by the defendant in a suit for recovery of possession of land upon establishment of title. The plaintiff is the landlord of the

disputed property, which, according to him, comprises two non, transferable occupancy holdings and was purchased by the defendant on the 21st

August 1917 at a sale in execution of a mortgage decree. The defendant contended, first, that the holdings belonged to a raiyat at fixed rent and

were consequently transferable u/s 18 of the Bengal Tenancy Act; secondly, that what had been mortgaged and was brought to sale was not the

entire land of the two tenancies, so that he was the purchaser of a portion of the holding and was consequently not liable to be evicted; and, thirdly,

that he had been recognised as tenant by the landlord, who had, after his purchase, demanded rent from him. The Trial Court held that the tenancy

could not be deemed to consist of holdings at fixed rent, as the rent was payable partly in cash and partly in kind. The Court further held that there

had been, no recognition by the plaintiff of the purchase of the tenancy by the defendant. But the Court upheld the contention that what had been

mortgaged and sold was less than the entire land of the tenancy. In this view, the claim for recovery of possession was dismissed; Dayamoyi v.

Anancla Mohan Roy 27 Ind. Cas. 61 : 42 C. 172 : 18 C.W.N. 971 : 20 C.L.J. 52. Upon appeal, the Subordinate Judge has reversed this

decision. He has affirmed the finding of the Court of first instance upon the question of the nature of the tenancy and the plea of estoppel. The

Subordinate Judge has, however, held that the sale certificate covers the entire lands of both the holdings. In this view, he has concluded that the

holdings had been abandoned by the original tenants, with the result that the plaintiff was entitled to re-enter. Upon the present appeal, the decision

of the Subordinate Judge has been challenged on three grounds; namely, first, that the holdings constituted tenancies at fixed rents, notwithstanding

that the rent was payable partly in cash and partly in kind; secondly, that the question, whether the defendant has made a valid purchase of all the

lands of the foldings must be determined with reference to, not the sale certificate, but the mortgage-deed; and, thirdly, that the question of

recognition has not been properly decided.

2. As regards the first question, the evidence, it is urged, makes it abundantly clear that the holdings have been held at rent which has not been

changed for many years. It is not disputed, however, that the rule of presumption embodied in Section 50(2) of the Bengal Tenancy Act is not by

its terms applicable. That section is, by its terms, limited in its application to suits or proceedings under the Bengal Tenancy Act. A suit for

ejectment does not fall within that description *Sarat Chandra Ghose v. Shyam Chand* 10 C. W.N. 930 *Rasamoy Purkait v. Srinath Moyra* 7

C.W.N. 132. But it has been ruled that even in cases where Section 30 is not directly applicable, the Court may act on a presumption similar to

the one arising under the section, if the facts justify the necessary inference; *Nityananda Pal v. Nanda Kumar Chowdhuri* 10 *Iad. Cas.* 163 : 13

C.L.J. 415 *Buzlul Karim v. Satish Chandra Giri* 10 *Ind. Cas.* 325 : 13 C.L.J. 418 : 15 C.W.N. 752 *Pran Krishna Saha v. Mukta Sundari Dassya*

12 *Ind. Cas.* 544 : 18 C.L.J. 193. Now, in respect of Section 50, it has been recently held, in the case of *Dina Nath Pal v. Raja Sati Prosad* [S.A.

No. 2108 of 1920] 72 *Ind. Cas.* 663 : 36 C.L.J. 220 : 27 C.W.N. 115 : A.I.R 1923 C. 74 [decided by Mookerjee and Chotzner, JJ., on the 7th

August 1922] that the presumption applies whether the rent is payable entirely in cash or partly in cash and partly in kind, or entirely in kind. The

same principle plainly applies to suits or proceedings where the rule embodied in Section 50 is extended by analogy. It follows that the Courts

below have erroneously held that the disputed holdings could not be tenancies held at fixed rents merely because the rent was payable partly in

cash and partly in kind. The relevant facts must accordingly be investigated and the Court must determine whether the tenancies have been held at

a uniform rent or rate of rent for such a length of time as to justify the inference that they must have been in their inception holdings at rents fixed in

perpetuity; in other words, *mourasi mokarrari* holdings.

3. As regards the second question, it is plain that the Subordinate Judge has not examined the matter from the correct standpoint. The root of the

title of the defendant is the mortgage-deed. With reference to the boundaries set out therein, compared with the entries in the Record of Rights, the

Trial Court came to the conclusion that one plot, that is, No. 996, was not included in the mortgage. This finding has not been expressly reversed

by the Subordinate Judge; but he has proceeded on the assumption not founded on the evidence that there may have been a mistake in the Record

of Rights. We are of opinion that this point requires re-consideration. We may add that whatever title may have vested in the defendant, must be

traced to the mortgage-bond and cannot be rested on an admission of the tenant himself. The question clearly is not, what the tenant intended to

mortgage but what was conveyed by virtue of the description actually inserted therein. The admission of the tenant cannot be utilized to contradict

the document and it would be dangerous to allow outside evidence to show the intention of the writer, which is not disclosed by the authorised

channel, namely, the words which he himself selected. This does not require elaboration and reference need only be made to the decision of the

House of Lords in *Great Western Railway v. Bristol Corporation* (1918) 87 L.J. Ch. 414 : 16 L.G.R. 393 where the earlier authorities will be

found reviewed.

4. As regards the third point, we are of opinion that the question of recognition has not been properly examined. The evidence indicates that the

plaintiff demanded not from the defendant, with full knowledge that the latter was in possession as purchaser of the tenants' rights in the land.

Prima facie this is evidence of an intention, unless otherwise explained, to recognise the title of the purchaser, and unless repudiated would

constitute the relationship of landlord and tenant. The observations in *Deonandan Pershad v. Meghu Mahton* 5 C.L.J. 181 : 11 C.W.N. 225 : 34

C. 57 where on the authority of *Evans v. Elliot* (1838) 9 A. & E. 342 : 48 R.R. 520 : 1 P. & D. 256 : 8 L.J.Q.B. 51 : 112 E.R. 1242 and

*Towerson v. Jackson* (1891) 2 Q.B. 484 : 61 L.J.Q.B. 36 : 65 L.T. 332 : 40 W.R. 37 : 56 P.J. 21 it was stated that mere demand for rent is not

sufficient to create the relationship of landlord and tenant, unless followed by assent in response thereto, do not affect the case before us. Here the

defendant purchased the holdings on the assumption that they were transferable and he professed to be tenant in occupation. In such

circumstances, demand by the plaintiff for rent is good evidence of mutual consent to the creation of a tenancy unless the plaintiff is able to explain

that the demand was not unqualified and should be differently interpreted; see *Underhay v. Read* (1888) 20 Q.B.D. 209 : 57 L.J.Q.B. 129 : 58

L.T. 457 : 36 W.R. 298 which refers to *Brown v. Storey* (1840) 1 M. & G. 117 : 1 Scott (N.R.) 9 : 9 L.J.C.P. 225 : 4 Jur. 319 : 133 E.R. 370.

This aspect of the case has not been investigated by the Courts below.

5. The result is that this appeal is allowed, the decree of the Subordinate Judge set aside, and the case remanded to him for re-consideration.

Costs will abide the result.