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Kishore Mohan Deb and Others Vs The Secretary of State for India in Council

Appeal from Appellate Decree No. 38 of 1935

Court: Calcutta High Court

Date of Decision: May 28, 1936

Citation: (1936) 05 CAL CK 0024

Judgement

Edgley, J.
In the suit out of which this appeal arises the Plaintiff sued the Defendant for ejectment from his homestead. The Defendant

contended that he should not be ejected, inasmuch as he had acquired occupancy rights in certain other lands in the village and this being the case

he was entitled to the benefit of sec. 182 of the Bengal Tenancy Act. He also contended that the ejectment notice, which had been served upon

him, was defective. It has not been urged before me that the provisions of the Transfer of Property Act apply in this case. The Courts below have

both held that sec. 182 of the Bengal Tenancy Act has no application in a case of this sort, because the agricultural land, in respect of which the

Defendant claims to have occupancy right in the village, was acquired after the acquisition of the homestead by the Defendant. It has, however,

been decided by this Court in the case of Pulin Chandra Daw v. Abu Bakar Naskar 40 C.W.N. 599 (1936), that, when a raiyat Holds his

homsetead otherwise than a part of his holding, he is entitled to the benefit of sec. 182 of the Bengal Tenancy Act, although he may have become a

raiyat subsequently to the taking of his residential tenancy. With regard to this point, it is, however, contended by the learned Advocate for the

Respondent that, in the particular circumsstances of the case out of which this appeal arises, the Defendant cannot in any event obtain the benefit of

sec. 182 of the Act, because the other land in the village in respect of which he has occupancy rights was acquired by him before the passing of the

amending Act of 1928 and, in these circumstances, it is contended that the provisions of the old Act should apply. There is evidence on the record

to show that the Defendant holds a certain plot of land in the village as an under-raiyat with occupancy rights-(Ex. C). Admittedly, this land was

acquired by him before the year 1928. If the provisions of the old Act applied, it is clear that he would not get the benefit of sec. 182 of the Act as

it now stands. It would appear however that, when the amending Act of 1928 was passed, the new sec. 182 became applicable to tenancies

which were in existence at the time of the passing of the Act. This being the case, both raiyats and under-raiyats would get the benefit of the new

section and they would, therefore, be entitled to hold their homesteads subject to the provisions of the Act as amended and the incidents of their

homestead tenancies will be governed by provisions of a new act applicable to raiyats and under-raiyats as the case may be.

2. In this view of the case I think that the decision of the Lower Appellate Court is wrong. The judgments and decrees of the Lower Courts are

therefore set aside and the Plaintiff"s suit is dismissed. The Defendant will get his costs throughout.