
(1872) 06 CAL CK 0008

Calcutta High Court

Case No: Special Appeal, Nos. 1192, 1193, and 1194 of 1871

Khaski Boy and Others

APPELLANT

Vs

Farzand Alikhan and
Others

RESPONDENT

Date of Decision: June 3, 1872

Judgement

Sir Richard Coach, C.J.

In this case, the notice of enhancement was served by the person to whom, at the time of the service of the notice, the rent was payable, and that appears to be what is required by the Act. The question, indeed, which is raised here is, whether the notice having been served by the person to whom the rent was then payable, that person can, either entirely by a sale, or partially by a lease, convey to the purchaser or lessee the rent, with the incident of its being liable to be enhanced under that notice, I do not see any reason why he should not be at liberty to do so: there is nothing in the Act which prohibits it. The enhancement is an incident to the rent which he conveys away and it would cause the greatest inconvenience, and might sometimes cause considerable injustice, if it was not possible for the zemindar who had given notices of enhancement to make any disposition of his property, without the whole of the notices falling to the ground, and the person who took from him, whether as purchaser or lessee, being obliged to serve fresh notices before any steps could be taken to enhance the rent. I can not think that that was intended by the Legislature, and there are no words in the Act which would lead me to suppose that it was. With regard to the case of *Doorga Roy v. Shyam Jha* 8 W.R., 78, I cannot help thinking that it must be in some way mis-reported, and that the learned Judges did not decide what they are reported to have done. Glover, J., says:--"When the notice was served, the zemindar was in possession and in receipt of rent. No farm had been given, and the farmer did not exist. The wording of s. 13 is imperative, and makes it absolutely necessary that the party to whom the rent is payable should be the one to issue notice,"--so far that is exactly what the section does say,--" and when this notice was served, the farmer was not that party." No doubt, the farmer was not that party then, and was not the party to serve the notice; the zemindar was the party then, and the party

to serve the notice. The Judges seem to think that the notice must be served, not by the party to whom the rent was payable, but by the party to whom the enhanced rent would be payable. Then they say:--"A ruling of this Court [Benodee Lal Ghose v. Mackenzie 3 W.R., Act X.R., 157], supports this view of the question," but really it does not, and this makes me think there is some mistake in the report, and that it can not be treated as a decision on this point in favor of the present respondent.

2. I think that here the notice was a good noticee the time it was given and that the lessee is entitled to the benefit of it, and may bring the suit for enhancement. Any defence which the tenant might have against the zemindar, would be good against the lessee. The tenant is not in any way injured by the lessee being allowed to bring the suit upon the notice which was given by the zemindar. The decree of the Court below must be reversed, and the suit remanded for retrial. The appellant will have the costs of this appeal.