

(1890) 02 CAL CK 0009

Calcutta High Court

Case No: None

Nilmoni Chuckerbutti and Others

APPELLANT

Vs

Bykant Nath Bera

RESPONDENT

Date of Decision: Feb. 3, 1890**Citation:** (1890) ILR (Cal) 467**Hon'ble Judges:** Prinsep, J; Banerjee, J**Bench:** Division Bench

Judgement

Prinsep and Banerjee, JJ.

This is a matter under Chapter XI of the Bengal Tenancy Act in which the proprietor of certain bromattar lands sought to obtain from the revenue officer a record that the lands were his private lands.

2. The case in the lower Court was presented to the District Judge in appeal as coming within Section 120, Sub-section 1 (b), and was so dealt with. The District Judge found that no village usage was established, and he accordingly affirmed the order of the Deputy Collector rejecting the petitioners' application. In the appeal before us, it has been contended that the real character of the case has been misunderstood, and that the case should have been dealt with under Sub-section (2). Now under that sub-section, the law allows three matters to be taken into consideration in determining whether the land should be recorded as the proprietor's private land. The first is local custom; the second is whether the land was, before the 2nd day of March 1883, specifically let as the proprietor's private land; and the third is any other evidence that may be produced. It is contended that there is some other evidence to establish the proprietor's right to have it recorded as his private land. That evidence has been placed before us, and consists of proceedings in two matters in 1885 and 1886, relating to the settlement of certain khas mehals within which these lands were situate, and the recording of these lands in the names of the appellants on claims being set up by them that the lands were their nij jote bromattar lands. On this assertion of title, it would seem that notices

were issued on the tenants, and the lands were so recorded in the settlement proceedings. It is now contended that we should remand the case to the lower Appellate Court, in order that it may receive and consider this evidence as bearing on Sub-section 2, Section 120. The District Judge in dealing with the case under Sub-section 1 (b) has held that that documentary evidence was irrelevant, and, in our opinion, he was right in so regarding it. Then, the question is whether it might properly be considered under Sub-section 2, Section 120. It seems to us that in enacting that sub-section, the Legislature had before it the attempts which might be expected on the part of landlords to frustrate the intention of the Legislature, as asserted in the Draft Bill laid before the Council for consideration, to extend the occupancy-rights of tenants before the measures then declared to be in contemplation became law; and therefore the particular date, 2nd day of March 1883, the date on which the Draft Bill was published in the Gazette, and leave was obtained to introduce the Bill into the Council, was declared to be the latest date on which there should be free action on the part of zamindars to assert their private rights, so as to prevent the accrual of special tenant rights. It was accordingly declared that it was a material point, in the consideration of such a matter as is now raised in appeal before us, whether the particular lands were, before the 2nd day of March 1883, specifically let as the proprietor's private lands. From this, we may take it, that it was intended that regard should be had to any declaration made before that date by the landlord, and communicated to the tenants in respect to the reservation of the proprietor's right over the land as his private land. In this view, we think that the following words in that sub-section "any other evidence that may be produced" must mean any other evidence tending in the same direction that may be produced to show the assertion of any title on the part of the proprietor, and communicated to the tenant before that date. But the documentary evidence on which the appellants' pleader relies in this case is of a much later date, and, therefore, in our opinion, can have no bearing on a proper consideration of the matter now before us. The proceedings are all of dates not only later than that mentioned in Sub-section 2, Section 120, but even later than that of the passing of the Bengal Tenancy Act. We think, therefore, that we should not be justified in remanding this case, so as to prolong these proceedings. The appeal must, therefore, be dismissed with costs.