

Krishna Chandra Saha and ors. Vs. Jogesh Chandra Saha and ors.

Krishna Chandra Saha and ors. Vs. Jogesh Chandra Saha and ors.

SooperKanoon Citation : sooperkanoon.com/858164

Court : Kolkata

Decided On : Aug-07-1942

Reported in : AIR1943Cal140

Appellant : Krishna Chandra Saha and ors.

Respondent : Jogesh Chandra Saha and ors.

Judgement :

ORDER

Henderson, J.

1. This rule has been obtained by the defendants and is directed against an order of the Munsif refusing to stay a suit under the provisions of the Bengal Non-Agricultural Tenants Act. The petitioners are admittedly non-agricultural tenants and the dispute between the parties is whether the suit is one for ejectment. The petitioners hold under a permanent lease. The cause of action is based on a covenant in the lease entitling the plaintiffs to take khas possession on payment of compensation, if they require the land themselves for their own use. The Munsif held that such a suit was not a suit for ejectment. In opposing the rule Mr. Sen supported this view. He said that, inasmuch as the lease has not been determined in the Transfer of Property Act, the suit is in the nature of one for a reconveyance and not for ejectment. He admitted that this argument would not apply apart from the provision for compensation. In my judgment it makes no difference. The

wording of the section is perfectly plain. A suit for khas possession is undoubtedly a suit for ejectment. The plaintiffs' cause of action is immaterial. The Act is a temporary measure pending the enactment of further legislation. It may well be that such legislation may relieve the petitioners from the clause in the lease which is the foundation of the present claim. The rule is accordingly made absolute, the order of the Munsif is set aside and the suit will be stayed. The costs of this rule will be costs in the suit - hearing fee one gold mohur.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com