

Krishtendra Roy Vs. Aena Bewa

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SooperKanoon Citation : sooperkanoon.com/858238

Court : Kolkata

Decided On : Jan-31-1882

Reported in : (1882)ILR8Cal675

Judge : Prinsep and ;Boss, JJ.

Appellant : Krishtendra Roy

Respondent : Aena Bewa

Judgement :

Prinsep, J.

1. The plaintiff in this case on appeal contends, that, having obtained a decree for arrears of rent, he is entitled to an order for ejectment within the terms of Section 52 of the Rent Act. The lower Appellate Court has held, that the defendant, having a transferable jote, is protected against ejectment, and that the only remedy which the plaintiff has, is under Section 59 to sell that holding.

2. It is argued on behalf of the appellant, by Baboo Sreenath Dass, that, although the zamindar might have the right of sale, he is entitled, if he so desires it, to eject the ryot, and he maintains that Section 59 does not apply to a jote such as it has been found the defendant holds, she being a cultivating ryot, but to intermediate tenures between the zamindar and the cultivating ryots.

3. It is a matter of some surprise to us to find that, although the present Rent Law has been in force for more than twenty years, this point should not have been determined by the High Court. The only case at all in point is that of *Nund Lall Ghose v. Seedee Nazir Ally Khan S.D.A.* Vol. II 1860 p. 382. In that case, it is true, the tenure was a ganti-tenure of some considerable dimensions, but the rule laid down by the Court in that case is, in our opinion, equally applicable to the conditions of the present case. Following that decision, in our opinion, the term 'under-tenure,' as used in Section 59, is not confined to a tenure intermediate between the zamindar and the ryot, but it would include any tenure which, to use the words of Section 59, 'by title-deeds or the custom of the country is transferable by sale.'

4. In this view, we think that the lower Appellate Court was right in holding that plaintiff was not entitled to a decree for ejectment.

5. The appeal is dismissed with costs.