

*Privy Council Appeal No. 116 of 1917.*

*Bengal Appeal No. 18 of 1915.*

Surendra Nath Roy and others - - - - - *Appellants*

*v.*

Dwarka Nath Chakravarty and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN  
BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 27TH FEBRUARY, 1919.

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*Present at the Hearing :*

VISCOUNT HALDANE.

VISCOUNT CAVE.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by MR. AMEER ALI.*]

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This is an appeal from a decree of the High Court of Bengal under Rule XI, Order XLI, of the Civil Procedure Code (Act V 1908), which gives to the High Court the power of summarily dismissing a second appeal without issuing notice to the respondent if it is satisfied there is no sufficient or substantial ground for the entertainment of the appeal. The facts of the case and the point to be determined lie within a very small compass. The plaintiffs are the owners of certain lands situated within the Calcutta municipality; the defendants have a *ryoti* holding within the plaintiffs' property. The plaintiffs seek to eject them from their holding on the allegation that it is a mere tenancy at will, whilst the defendants allege that it is a "*mourasi mokurari jumma*," that is a permanent, heritable and transferable *jumma* holding. The Mounsif, before whom the case came for trial in the first instance, was of opinion that the defendants were merely tenants at will and accordingly decreed the plaintiffs'

claim for ejection. On appeal the District Judge came to a directly opposite conclusion. He has found as a fact upon the evidence that the defendants' holding had existed for a considerable number of years, that it was created somewhere in 1845, that it had been held ever since at a fixed permanent rent and that the heritable, transferable right of the defendants has been recognised by the plaintiffs' predecessor in title. He accordingly reversed the decree made by the Mounsif and dismissed the plaintiffs' suit. The plaintiffs preferred a second appeal to the High Court which, as stated already, was summarily dismissed.

The plaintiffs thereupon applied for and succeeded in obtaining leave to appeal to His Majesty in Council. It was argued on their behalf before the Board that the District Judge did not give sufficient weight to certain rent receipts granted to the defendants by the plaintiffs or their predecessor in which the words "tenant at will" (*ichadin proju*) appeared distinctly indicating the character of the tenancy. It is contended that the onus being on the defendants to establish the permanent and transferable character of their holding, the inference which the District Judge has drawn from the facts on which his judgment is based is rebutted by the words "tenant at will" in the rent receipts. Their Lordships agree with the District Judge that no importance can be attached to the words in question; there is nothing to show that the defendants or their predecessors consented to the insertion of those words in the rent receipts or that they even knew of it. The facts they have established in evidence appear to their Lordships to be conclusive as to the character of the holding. It has been in existence since 1845; the defendants or their predecessors have dealt with it as a permanent transferable holding and what is more the plaintiffs' father took a mortgage of the holding or part of it for *benami* in the name of one Rajaramdas. This transaction took place in May, 1891, and the recital in it fully supports the view which the District Judge formed on the evidence. The executant of the mortgage, Raghanath Chatterjee, the predecessor in title of the defendants, after reciting the origin of his title to the lands which he was mortgaging and which he has been holding from 1252 B.S. (1845), states as follows:— "I mortgage to you the said *jumma* land, measuring 1 *bigha*, 17 *cottahs*," and then the covenant runs as follows:—"In case I cannot pay the whole amount due to you within the time fixed for payment you will realise it by suit after expiry of the time fixed for payment the whole amount due to you by sale at auction of the mortgaged property." Rajaramdas, in whose favour the mortgage was executed, was admittedly a *benamidar* of the plaintiffs' father. After Rajaramdas' death he appears to have obtained a transfer of the mortgage to himself. The recital in the mortgage clearly shows that the mortgage was taken on the basis that it was a permanent, transferable heritable holding. Their Lordships see no reason to interfere with the decree of the High Court. The appeal will accordingly be dismissed, but without costs, as the respondents do not appear at the Bar. And their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

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SURENDRA NATH ROY AND OTHERS

v.

DWARKA NATH CHAKRAVARTY AND  
ANOTHER.

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DELIVERED BY MR. AMEER ALI.