

CIVIL REVISION.

Before Guha J.

RADHIKALAL GOSWAMI.

v.

SATEESHCHANDRA SEN MAJUMDAR.*

1935

Feb. 7, 19.

Holding—Appurtenances—Improvements—Structures—Standing trees—Tenant, Property of—Pre-emption—Compensation—Purchaser—Bengal Tenancy Act (VIII of 1885), s. 26F.

A holding must include all that is appurtenant to it, such appurtenances including (i) structures on the holding, which are improvements [as held in the case of *Abdul Hai v. Abdur Rahman* (1)] and (ii) standing trees, which cannot be considered separately from the tenancy.

For enabling the pre-emptor, therefore, to exercise his right under the law, the transferor from the tenant had to be fully compensated in the matter of payment made by him for all that was appurtenant to the tenancy and was sold by the tenant in possession.

CIVIL RULES under section 115 of the Code obtained by the pre-emptor.

The facts of the case and the arguments in the Rule appear fully in the judgment.

Bijankumar Mukherji and *Manilal Bhattacharjya* for the petitioner.

Ramaprasad Mukhopadhyaya for the opposite party.

Cur. adv. vult.

GUHA J. This Rule is directed against an order passed by the Munsif, 1st court, at Malda, in a proceeding under section 26F of the Bengal Tenancy Act. It was held by the Munsif that the applicants for pre-emption, the petitioners in this Court, were liable to pay full consideration money for the holding transferred by the *rāiyat* with right of occupancy, as mentioned in the *kabālá*. The consideration mentioned

*Civil Revision, No. 1430 of 1934, against the order of H. Bhuiya, First Munsif of Malda, dated July 20, 1934.

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in the *kabálá* was Rs. 300—Rs. 50 for land and Rs. 250 for the tree standing on the land.

The applicants under section 26F, Bengal Tenancy Act, were under the law required to deposit the entire amount of consideration or value of the property sold—the holding of the transferor; and a holding must include all that is appurtenant to it; such appurtenances including structures on the holding, which are improvements [as held in the case of *Abdul Hai v. Abdur Rahman* (1)] and standing trees, which cannot be separately considered from the tenancy. In the present case, trees were standing on the land appertaining to the tenancy, and the transferee from the tenant had paid full consideration or value for the land and trees standing on the land: for enabling the pre-emptor, therefore, to exercise his right under the law, the transferor from the tenant had to be fully compensated in the matter of payment made by him for all that was appurtenant to the tenancy and was sold by the tenant in possession. It was not suggested, in the case before us, that the property in the trees sold as appurtenant to a holding was not in the tenant transferor. In the above view of the case, as it was not possible to hold that the trees on the holding were not appurtenant to the tenancy, and regard being had to the fact that the transferor tenant had received from the transferee full value of the trees standing on the tenancy, the decision of the court below must, in my judgment, be upheld.

The Rule is discharged.

The petitioners are allowed one month's time from the date of arrival of the record in the lower court to carry out the directions of that court. On failure to carry out the directions within the time allowed, the application under section 26F of the Bengal Tenancy Act made by the petitioners will stand dismissed.

Rule discharged.

G. S.