

*Privy Council Appeal No. 161 of 1927.*

*Bengal Appeals Nos. 25, 26 and 27 of 1926.*

Rakhal Chandra Basak - - - - - *Appellant*

*v.*

The Secretary of State for India in Council - - - - - *Respondent*

Jasoda Lal Basak and others - - - - - *Appellants*

*v.*

Same - - - - - *Respondent*

Brojo Gopal Basak - - - - - *Appellant*

*v.*

Same - - - - - *Respondent*

*(Consolidated Appeals.)*

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 5TH FEBRUARY, 1929.

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*Present at the Hearing :*

THE LORD CHANCELLOR.

LORD CARSON.

SIR CHARLES SARGANT.

*[Delivered by the LORD CHANCELLOR.]*

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This is an appeal from a judgment of the High Court of Calcutta reversing the judgment of the District Judge of Dacca. The question in issue turns upon the construction to be placed upon a lease made in the year 1887 between the predecessor in title of the present appellants and one Kishori Lal Roy Chowdhuri,

his lessee. By that lease the lessors granted to Kishori Lal Roy Chowdhuri a lease of certain property in Dacca. The lease commences with the recital that Kishori Lal Roy Chowdhuri had taken a lease of a house described as No. 73, the boundaries of which are set out in the document, and it recites that it is necessary for Kishori Lal Roy Chowdhuri to secure a house for a long period, with the object of removing the insufficiency of accommodation and confirming the stability of a school and college which had been established thereon. Then it recites that the lessors are agreeable, according to the lessee's proposals, to keep the house on lease to the lessee as long as he likes. It goes on to stipulate for a monthly rental of 140 rupees and that the lessee shall not be entitled to give up the house before he prepares a house of his own for the school, and that the lessors shall not be entitled to take hold of the house unless the lessee gives up the same of his own accord. There are further provisions as to what is to happen with regard to buildings erected on the land in the event of the lessee giving up his lease, and the lease finishes with a statement that all the stipulations shall take force and effect against and in favour of the lessors, their heirs and representatives in succession and of the lessee, his heirs and representatives. After the execution of that lease the lessee carried on a school and college for some twenty years and in the year 1907 he executed an indenture of trust, by which he conveyed the lease and certain other properties to trustees, in order that they might carry on the college and school. In the year 1908 the school was removed to another site. The college continued to be carried on for the time being on this site. At some date between 1908 and 1910 the land adjoining the property demised was acquired by the trustees, and upon the land so acquired a new building was erected for the use of the college. The land, the subject matter of the lease of 1887, appears thereafter to have been used partly as a hostel for students at the college, partly for superintendents' buildings, for a dining room, for lavatory accommodation and for a house for the lodge keeper. This state of affairs continued from 1910 to 1920, the trustees continuing to pay the monthly rent to the lessors, and no objection being raised by anyone to what was being done. In the year 1920 it appears that the Legislature desired to establish the college on a more permanent basis, and by Act No. 16 of 1920 the Indian Legislative Council enacted that the property comprised in the lease should be transferred to and vested in and held by the Governor of Bengal in Council. Some time in the year 1920, after the passing of this Act but before it had actually come into force, the Government determined to acquire the freehold interest in the land, and it then became necessary to ascertain the amount of compensation to be paid to the appellants for their interest in the land. The Collector assessed the interest on the basis that they were entitled to a perpetual rental of 140 rupees per month but that they had no substantial or market-

able interest in the land beyond that amount. From that decision the appellants took the case to the Court, and the District Judge reached the conclusion that the effect of the Act to which attention has just been called, No. 16 of 1920, was to bring the lease to an end, and therefore that the appellants were entitled to have their interest in the land valued as a fee simple in possession. From that decision an appeal was taken to the High Court of Calcutta, and the Judges of the High Court reversed the judgment, taking the view that the lease was determinable only at the option of the lessee and that the value of the appellants' chance of receiving back the land was nothing at all, since it was quite plain that the effect of the Act was to put the college on a permanent basis. Before their Lordships' Board Mr. de Gruyther, for the appellants, did not contend for the view adopted by the District Judge, but he said that the lease on its true construction only gave to Kishori Lal Roy Chowdhuri and his successors the right to remain in possession of the land so long as either the school or the college was actually carried on on the site demised, which he explained to mean the school or college buildings must actually be upon the site. Their Lordships have considered the language of the lease of 1887, and they are unable to accept that construction. The lease in its terms declares that the lessors shall not be entitled to take hold of the house unless the lessee gives up the same of his own accord, and it proceeds to say that the lessee shall not be entitled to give up the house before he acquires a house of his own for the school and that the lessors are agreeable to the lessee keeping the house as long as he likes. But, even if it were true that under the terms of the lease the lessors were entitled to determine it upon the lessee ceasing to carry on a college or school there, their Lordships are quite unable to take the view that the fact that the physical site of the college buildings is now upon adjoining land and that the land is being used for purposes of the college other than the actual teaching in a class room would be such a cessation of the use of the land for the purposes of the college as to entitle the lessors to exercise any such right. In their Lordships' view this land has always been used and is being used for the purpose of the college; it is quite plainly intended to continue that use permanently and, that being so, they think that the conclusion reached by the High Court of Calcutta, that the value of the right existing in the lessors of the land is properly established by capitalising the monthly rent, is the correct view, and they will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

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RAKHAL CHANDRA BASAK

v.

THE SECRETARY OF STATE FOR INDIA IN  
COUNCIL

JASODA LAL BASAK AND OTHERS

v.

SAME

BROJO GOPAL BASAK

v.

SAME.

(*Consolidated Appeals.*)

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DELIVERED BY THE LORD CHANCELLOR.

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