(1925) 07 CAL CK 0001

Calcutta High Court

Case No: None

Pitambarnath and Others		APPELLANT
	Vs	
Bhairab Chandra Sinha and Others		RESPONDENT

Date of Decision: July 14, 1925

Citation: 91 Ind. Cas. 878

Hon'ble Judges: Babington Newbould, J

Bench: Single Bench

Judgement

Babington Newbould, J.

This is an appeal from the decision of the District Judge of Tipperah reversing the decision of the Munsif, Fourth Court at Comilla. The plaintiffs who are the appellants before me brought a suit for declaration that their raiyati jama had been wrongly recorded in the Settlement Record of Rights as in ordinary raiyati holding instead of as a raiyati holding at fixed rent.

2. The main point urged in this appeal is that the lower Appellate Court was wrong in law in stating what it was necessary for the plaintiffs to prove in order to establish the presumption that the holding had been held at a rent which had not been changed from the time of the Permanent Settlement. The lower Appellate Court held that having regard to the provisions of Section 115 of the Bengal Tenancy Act the presumption for which Clause (2) of Section 50 provides did not arise in the present case. He then went on to consider whether the ordinary presumption arose from the facts proved and decided against the plaintiffs.

3. It is contended in the first place that the lower Appellate Court was wrong in holding that the presumption u/s 50 could not be applied. On this point I am in entire agreement with the learned District Judge that the words of Section 115 appear quite plain and that the later decisions of this Court support his view that the presumption u/s 50 cannot apply to a tenancy when the particulars mentioned in Section 102(b) have been recorded under Chapter X if an attempt is made to raise it

in a regular suit and not in a proceeding u/s 105 or Section 106 of the Act. This seems clear from the decision of two Benches of this Court in Bamandas Bidyasagar v. Sadhu Majhi 64 Ind. Cas. 415 : 26 C.W.N. 945 and Prasonna Kumar Sen v. Durga Charan Chakravarti 70 Ind. Cas. 537 : 26 C.W.N. 947 : 36 C.L.J. 291 : AIR (1922) (C) 146 : 49 C. 919.

4. Another preliminary point that was taken was that Section 109 was a bar to the landlords-defendants contesting the plaintiffs'' suit. It appears that after the publication of the Record of Rights the landlords applied u/s 105 of the Bengal Tenancy Act for enhancement of rent and withdrew their case. It is said that under the recent Full Bench ruling that will be a bar to the landlords now raising the defence that the rent of the plaintiffs'' tenancy was enhanceable. But the subject-matter of the landlords'' application was not the same as their defence in the present suit. In their application u/s 105 they raised the question whether they were then entitled to enhance the rent. They did not raise question whether the rent of the holding was enhanceable or unenhanceable.

5. The main contention in this appeal is that the lower Appellate Court has erred in law as to what is necessary for the plaintiff to prove to establish the natural presumption apart from the presumption that arises under Clause (2) of Section 50 of the Bengal Tenancy Act. The passage to which objection has been taken is as follows: "The general principle is that in a suit such as the present no natural presumption can arise of fixity of rent since the Permanent Settlement merely out of proof that the tenants have been paying at a fixed rate for the past few decades, and that to establish such presumption the tenants must adduce positive and cogent evidence of the payment continually at the fixed rate." It is contended that the learned Judge has fallen into an error similar to that which was the subject of the decision in Pran Krishna Saha v. Mukta Sundari Dassya 21 Ind. Cas. 544 : 18 C.L.J. 193. In that case it was held that the lower Appellate Court was wrong in holding that there was a legal obstacle in the way of its presuming from long uniform payment of rent that the holding was one at a fixed rate. Reading the judgment of the lower Appellate Court in the present case it appears to me that he has not fallen into that error. He has clearly realized that apart from the presumption of Clause (2) of Section 50 the natural presumption may arise, but he has held that the evidence adduced on behalf of the plaintiffs is insufficient to give rise to that presumption. There is clear authority to support his view that no such presumption can arise merely from proof that the tenants have been paying at fixed rate for the past few decades. It is sufficient to refer on this point to the decision in the case of Jagabandhu Saha v. Magnamoyi Dassi 36 Ind. Cas. 884 : 44 C. 555 at p. 566 : 24 C.L.J. 363 : 22 C.W.N. 89. I am not sure that the lower Appellate Court was right in the assertion as to the evidence that the tenants must adduce in order to support this presumption. But his finding that the evidence adduced in this case was insufficient was not vitiated by any legal error.

6. I accordingly dismiss this appeal with costs.