Jogendra Kumari Dassya and Another Vs Jogendra Nath Dutt and Others

Court: Calcutta High Court

Date of Decision: Aug. 31, 1928

Citation: 121 Ind. Cas. 562

Hon'ble Judges: Garlick, J; Basu, J

Bench: Division Bench

Judgement

1. This is an appeal from the judgment and decree of the District Judge of Bankura reversing the judgment and decree of the Munsif at Bankura in

a suit for recovery of arrears of rent in kind. The learned Munsif decreed the suit in full. He held that the plaintiff was entitled to the market price of

the paddy and not the price stated in the kabuliyat. The learned District Juge held that the plaintiff was entitled to the price stated in the kabuliyat

and not the market price as allowed by the Munsif. The plaintiffs prefer this appeal. The question involved in the appeal is whether the plaintiff is

entitled to the market value of the paddy and straw reserved as rent in the kabuliyat or the price of the same as stated in it. The material portion of

the kabuliyat is as follows.

I am making a settlement to you for ever in dar mukarari right at an annual rent of 7 maps of saja paddy on the standard of bankuri pai and 1

kahan straw. You will pay the settled saja paddy and straw to me and after me to my heirs every year in the month of Magh without any increase

or diminution from the year 1291 B.S. You will enjoy the said land from generation to generation according to your will in your own jote either by

settling the jote or by settling after constructing huts. You will not get reduction of settled rent for any reason such as drought, etc. If you fail to pay

saja paddy, you will pay excess at the rate of 2 salis for each map for each year. In future the rent of the said land will never be increased or

decreased. On these term"s after accepting kabuliyat for ever, dar mokarari patta is granted for ever.

2. The clause in the sentence:

Ukta ek kahan vara mulyadin taka dhaner mulya atash takahaibey has been translated on the side of the appellant as the price of the aforesaid 1

kahan of straw is estimated to be Rs. 2 and the price of the aforesaid paddy is estimated to be Rs. 28. On the side of the respondent it is said that

it should be translated as ""the price of the aforesaid 1 kahan of straw will be Rs. 2 and the price of the aforesaid paddy will be Rs. 28.

3. What has been fixed for ever is the paddy rent and not the price of the paddy. No money rent is fixed in the patta nor is there any stipulation in

the patta to the effect that in the event the failure of payment of paddy and straw so much money would be paid. It has been urged on the side of

the respondent that if it is held that it was intended by the parties that the market price would be paid then it would be seen that the rent was not

fixed as the price would vary from year to year. What was intended by the parties was that the paddy rent would be fixed for ever. It clearly goes

to show that the clause regarding the price of the paddy which was inserted towards the end of the patta was for other purposes, namely, for the

purposes of stamp-duty and registration Reference has been made to several rulings of this Court on this point. But each case must be decided

upon the terms of the contract and having regard to the terms of the contract in the present case, we are of opinion that it was intended by the

parties that the market price should be paid and that it was never intended that the sum of Rs. 28 as the price of the paddy and Rs. 2 as the price

of the straw were fixed for ever. Reference has been made to an unreported decision in Appeal from Appellate Decree No. 2488 of 1923, dated

10th February, 1926. The paper-book of that case has been put before us. The terms of the lease in that case at first sight would seem to be

similar to those in the present case. But in the present case the terms are really distinguishable from those in the other case. In that case no doubt it

was mentioned that the price of the saja paddy would be Rs. 27. After that clause it was stated that it was to this effect that a dar mukarari patta

was granted. In the present case as I have already said there is nothing in the patta after the clause regarding the price of the paddy and straw. In

these circumstances we think that we should hold that the plaintiffs are entitled to the market price of the paddy and straw.

4. Another point has been urged in this appeal to the effect that the decision ia Rent Suits Nos. 857 of 1912, 358 of 1916 and: 84 of 1920 would

operate as res judicata on the question as regards this point. In Rent Suit No. 857 of 1912 and Rent Suit No. 358 of 1916 the question now

raised was not raised at all. The subject-matter-of the suit in the present case is not the same as in those suits and in rent suits the causes of action

are always different. As this question was not raised in the previous suits the decision in those ffsuits would not operate as res judicata. In any of

these rent suits there was not a prayer for a declaration that the plaintiffs were: entitled to the market price of the paddy as part of the substantive

relief and the Court did not declare in these suits that the plaintiff was entitled to the market price of the paddy. In Rent Suit No. 84 of 1920 this

question was, no doubt, ditinctly raised but it appears that the present defendant No. 6 was not a party to that suit. The learned Munsif has gone

into these questions in detail in his judgment. In these circumstances we hold that the decision of the previous suits will not operate as res judicata.

For the above reasons the appeal is allowed. The judment and decree of the learned District Judge are set aside and those of the Munsif restored.

The appellants will get their coats in this Court as well as in the lower Appellate Court.