(1931) 06 CAL CK 0001

Calcutta High Court

Case No: None

Seamuddin Molla and Others		APPELLANT
	Vs	
Mohadeb Mondal and Others		RESPONDENT

Date of Decision: June 30, 1931

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 48, 48(a)

Citation: AIR 1933 Cal 264

Hon'ble Judges: Suhrawardy, J; Graham, J; Brett, J

Bench: Full Bench

Judgement

Suhrawardy, J.
This is an appeal by the landlords and arises out of a suit for rent based upon a kabuliyat. It appears that the defendants held a jama of 12 bighas bearing a rental of Rs. 15. They let out this jama to the plaintiff at a rental of Rs. 15-4-0 and then took a sub-lease, agreeing to deliver 13 aria of paddy annually as rent, and in the alternative to pay Rs. 400 as the price thereof. The main contention of the defendants in the suit was that the plaintiffs could not recover rent higher than what they were entitled to u/s 48, Ben. Ten. Act, before its amendment in 1928. The section says:

The landlord of an under-raiyat holding at a money rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than 50 per cent when the rent payable by the under-raiyat is payable under a registered lease.

2. Here the lease is registered and if the section applies the plaintiffs will be entitled to get annually Rs. 15-4-0 and 50 per cent of it, that is Rs. 22-14-0, as yearly rent from the defendants. The trial Court held that the rent was not payable in money but in kind, and therefore according to the view expressed in some cases by this Court Section 48(a) had no application. The lower appellate Court on a consideration of the kabuliyat has held that Section 48 of the Act applies and that the plaintiffs are

not entitled to recover rent more than Rs. 22-14-0 a year. The case really turns upon the construction of the kabuliyat. The law that seems to be established from various decisions on this point is that if the rent is payable in kind and in the alternative in money at the option of the tenant, Section 48 is applicable. But where the alternative money rent is recoverable at the option of the landlord, Section 48 has no application. If the interpretation put by the learned Subordinate Judge is right, the case is covered by the decision in Ananda Chandra Roy v. Makram Ali 3 Ind. Cas. 204. The relevant portion of the kabuliyat is in these words:

If we do not deliver paddy (as aforesaid) then we will pay to you within the said month as value of the said paddy Rs. 400 according to the present market rate If we do not, then you will be entitled to realize the same amicably or by suit with interest thereon.

3. In our opinion the Subordinate Judge has placed the correct construction on this kabuliyat. It fixes the rent at 13 aris of paddy yearly, but at the same time gives the option to the tenants to pay Rs. 400 as value of the paddy instead of the paddy. The kabuliyat in Ananda Chandra Roy''s case 3 Ind. Cas. 204 referred to above was also to the same effect. There the stipulation was:

We shall deliver on the 30th Assin every year, a quantity of 27 maunds 30 seers of paddy at the rate of 3 maunds per kani of the chukti per annum (or) in the absence thereof a sum of Rs. 132 on account of the value of the paddy and shall deliver on the 30th Pous every year a quantity of 59 maunds of paddy at the rate of 4 maunds per kani per annum, and in the absence thereof pay a sum of Rs. 118, and we shall pay on account of the value of paddy and jute Rs. 250 and shall take receipts.

Brett, J.

4. Sitting singly held that the intention of the plaintiff in taking the kabuliyat was to realize a yearly rent of Rs. 250 whether it was paid in jute and paddy or in cash as stipulated. The contract was that a share of the produce or its value should be paid as rent. On. Letters Patent appeal, Jenkins, C.J., agreed that the defendant who was an under-raiyat had the right to pay his rent in the form of money rent and the suit was framed for the purpose of recovering the money rent, and that the rights of the parties in relation to the recovery of that rent must be determined by reference to Section 48 and that the limit imposed by that section must be observed. In Kamaraddi v. Monmohini Dassya AIR 1919 Cal 582 the contract was to the effect that in default of payment of paddy, the plaintiff (landlord) would be entitled to realize Rs. 20 as the price of the paddy with damages and costs by instituting suits. Mookerji, J., in distinguishing Ananda Chandra Roy''s case 3 Ind. Cas. 204 from the case in question observed that in that case the tenant had the option to deliver a certain quantity of the produce or in the alternative money. But in the case before him there was a provision to the effect that if there was any default on the part of the tenant, the landlord would be entitled to realize a certain sum of money as the

price of the paddy. This only accentuated the true position, namely, that the rent was payable not in cash, but in kind; and the contract only prescribed the measure of the damages which the landlord could claim in the event of default on the part of the tenant.

5. That case therefore is no authority in favour of the appellant. There the contract was for delivery of paddy and the landlord was given the option to recover the price of the paddy if any default was made in payment of the rent in paddy. In Ismail Pramanik Vs. Khedir Pramanik, the facts were different from those in the present case. There the defendant executed a usufructuary mortgage in favour of the plaintiff and took a sublease from him of the land for a period of nine years, stipulating to pay Rs, 20 as rent per year; the rent which the plaintiff was to pay under the lease in favour of the defendant was Rs. 2-12-0, and there was a further stipulation that the plaintiff would pay on behalf of and in the name of the defendant the rent due to the superior landlord. The defendant contended that the plaintiff was not entitled to recover Rs. 20 per year from the defendant u/s 48, Ben. Ten. Act. On a consideration of these facts it was held that the defendant was not an under-raiyat of the plaintiff; but was really a raiyat of the superior landlord and had come to an arrangement with the plaintiff for the payment of the interests due on the mortgage made in his favour by taking a lease of the land from the plaintiff who had the right under the usufructuary mortgage to possess it. It seems to me that the kabuliyat in this case fixes the paddy rent and in default thereof money rent; either is to be payable by the tenant at his option. The case therefore comes within the principle enunciated in Ananda Chandra Roy''s case 3 Ind. Cas. 204. The view of law taken by the Subordinate Judge is therefore quite correct.

6. It has next been argued that the plaintiff was really a mortgagee and that therefore the principle in Ismail Pramanik Vs. Khedir Pramanik, , referred to above, does not apply. The defendant no doubt said in his pleadings that the plaintiff was the mortgagee, that he had deposited the mortgage amount in Court and had paid off the plaintiff''s dues. On this point the lower appellate Court has found that there was no evidence worth the name that the lease by the defendant to the plaintiff was in reality a mortgage, and that before the Court there was no dispute that the plaintiff was a raiyat holding at a money rent. The third point urged on behalf of the appellant is that the defendant was not an under-raiyat. But this point was not taken in any of the Courts below and we cannot allow it to be raised here in second, appeal. From the judgment of the trial Court it appears that it was assumed and it was the case of both parties that the plaintiff had got raiyati right in the holding. Besides it is not the appellant''s case that he had a right higher than that of a raiyat. But he says that he may be an under-raiyat and therefore Section 48 would not apply in this case. Section 48 applies to the case of an under-raiyat without reference to the status of the landlord. "Under-raiyat" has been defined in Section 4 of the Act as a tenant holding whether immediately or mediately under a raiyat, so that even if the landlord happens to be an under-raiyat himself, he must be holding

under a raiyat and the tenant holding under him would be holding mediately under a raiyat. Section 48 does not say of a raiyat but says that the landlord of an under-raiyat cannot recover more than a certain percentage mentioned therein. This contention should also be overruled. Lastly it has been suggested that Section 48 of the amended Act should apply in this case as the judgment of the lower appellate Court was delivered after that Act had come into force. It is not necessary to discuss the point, for the judgment of the trial Court was delivered before the amendment, and Section 48 is not one relating to procedure only and has no retrospective force. The result is that the appeal is dismissed with costs.

Graham, J.

7. The only point raised in the appeal is whether the rent payable by the defendant is limited by Section 48(a), Ben. Ten. Act. The trial Court held that it was not so limited and gave a decree for the full amount claimed. On appeal that decision has been modified by the Additional Subordinate Judge, Khulna, who held, differing from the Munsif, that the plaintiff could not recover rent from the defendants at a rate exceeding the limit prescribed by Section 48(a), that is, 50 per cent of the rent payable by the plaintiff. The rent payable by the plaintiff, according to the plaint, was Rupees 15-4-0 so that the plaintiff could not get more than Rs. 22-14-0 as rent. The appeal was decreed accordingly. The main argument advanced on behalf of the appellant is that the learned Additional Subordinate Judge ought to have held that Section 48(a), Ben. Ten. Act, has no application in this case, as the kabuliyat on which the suit was instituted did not really create the relationship of landlord and tenant, but was an arrangement come to between a mortgagor and mortgagee. It is further contended that there was in reality no dispute between the parties, that they stood towards each other in the relation of mortgagor and mortgagee, and that the Court of appeal below erred in holding that there was no evidence in support of any such relationship.

8. In my opinion this contention cannot be allowed to prevail, because it is clear that no such case was made before the trial Court. If that case was relied upon, it certainly ought to have been made before the Munsif, since it was the case of the defendants throughout that Section 48(a) applied and that the plaintiffs were not entitled to get more than 50 per cent as mentioned in that section. A translation of the kabuliyat has been placed before us and there is nothing in it which appears to support the case of mortgage which is now brought forward on behalf of the appellants. In my judgment the decision of the Court of appeal below is right, and I agree with my learned brother that this appeal must be dismissed.