Akbar Ali Mian and Others Vs Musammat Hira Bibi and Another

Court: Calcutta High Court

Date of Decision: June 13, 1912

Acts Referred: Bengal Tenancy Act, 1885 â€" Section 52

Citation: 15 Ind. Cas. 332

Hon'ble Judges: N. Chatterjea, J; Coxe, J

Bench: Division Bench

Judgement

Coxe, J.
These appeals arise out of proceeding"s u/s 105 of the Bengal Tenancy Act and the only points that arise for decision are, firstly,

whether an appeal lies and secondly, whether under the circumstances of this case, the landlords-respondents are entitled to additional rent u/s 52

of the Act.

2. The facts found appear to be as follows: The land was measured by the landlords in 13G1 but the measurement was very badly done with the

somewhat unusual result that the area put down as in the occupation of each tenant was far below the real area of his holding. The rates of rent

were the same then as now bat, as the area was understated, the rent also was understated. Now that the land has been properly measured, the

landlords claim that they are entitled to rent at the same rates on what has been found to be the real area. This view has been accepted by the

Special Judge, and the tenants appeal.

3. As to the preliminary objection that no appeal lies, I think that it is now sufficiently-well settled that a decision fixing the area" for which the

tenant mast pay; rent is not a decision settling a rent from which an appeal is barred by Section 109 A of the Act. This was clearly held in the case

of* Mathura Mohun Lahiri v. Umasundari Debi 25 C. 34 under the Act before its amendment and this decision was followed after the amendment

of the Act in Raj Kumar Pratap Sahay v. Ram Lal Singh 5 C.L.J. 538. The opposite view was taken in Rameswar Singh v. Bhooneswar Jha 4

C.L.J. 138 33 C. 837, in which no reference was made to Mathura Mohan Lahiri v. Umasundari Debi 25 C. 34. But in the Full Bench of Pirthi

Chand Lal Chowdhuri v. Shiekh Basarat Ali 3 Ind. Cas. 449 13 C.W.N. 1149 10 C.L.J. 343 37 C. 30, both that case and Raj Kumar Pratap

Sahay v. Ram Lal Singh 5 C.L.J. 538 were cited apparently with approval and I think, therefore, that the balance of authority must be regarded as

in favour of the view taken in those cases and against that taken in Rameswar Singh v. Bhooneswar Jha 4 C.L.J. 138 33 C. 837.

4. As to the second question, I think that the current of decisions is in favour of the view taken by the learned Special Judge. The question tarns on

the proper meaning to be attached to the words the area for which rent has been previously paid"" in Section 52 of the Act. In Gouri Pattra v. Reily

20 C. 579, it was held that in claiming additional rent u/s 52, a landlord would have to show that the lands held by the tenants were in excess of the

lands originally let to them in consequence of some encroachment or some alluvial increment, or that the previous settlement was made on the basis

of a measurement and the rates of rent as applied to the area then determined, while on a fresh measurement made by the same length of measure,

it has been found that he is entitled to receive additional rent which by carelessness, or neglect or some other reason he had hitherto lost."" In

Rajendra Lal Goswami v. Chundra Bhusan Goswami 6 C.W.N. 318, it was held that the landlord has to show what the area of the tenure was

when first created and that the rent originally fixed was not intended to cover the excess area. The words the area for which rent has been

previously paid"" was construed as meaning ""the area with reference to which the rent previously paid had been assessed or adjusted."" These two

decisions were followed in Ratan Lall Biswas v. Jadu Halsana 10 C.W.N. 46 and in Raj Kumar Pratap Sahay v. Ram Lall Singh 5 C.L.J. 538

already cited where the learned Judges say: "If it is established that the original letting was not with reference to area at all, but was a letting at a

consolidated rent for lands within specified boundaries, no additional rent can be claimed, unless it is shown that the tenant is in occupation of land

situated outside the boundaries prescribed. If, however, it is proved that the original rent was settled with reference to the quantity of land let out, in

order to entitle the landlord to claim additional rent, he must, in the first place, prove what the original area was.... If it is found that the tenant is in

occupation of a larger area according to the same measurement, the tenant would be bound to pay additional rent in respect of the excess area in

his possession.

5. It appears to me that the whole question is one of the intention of the parties applicable to the tenancy before the final measurement. If the

landlord originally intended to let and the tenant intended to take such and such a piece of land or such and such holding, be the number of bighas

in it what they may, the fact that the area proves to be larger than what was originally stated would not entitle the landlord to additional rent. If,

however, he intended to let and the tenant intended to take so many bighas, be the actual piece of land what it may, the landlord would be entitled

to additional rent when the tenant was proved to hold more bighas than were originally let to him. No doubt, when a piece of land with definite

boundaries is leased, there is plenty of authority for holding that the description of the boundaries will prevail over the statement of the area, and the

landlord would in all cases have the burden of proving that the settlement was with reference to area alone. But in the present case where the

learned Special Judge holds as a fact, which we cannot question in second appeal, that the former rents were adjusted according to measurement,

the landlord is, in my opinion, entitled to additional rent.

6. The cross-appeal relates to an allowance made by the Special- Judge for the inaccuracy of the former measurement. I do not quite understand

how this portion of the learned Special Judge''s judgment is consistent with the rest, but it relates not to the area for which rent is to be paid, but to

the rent that ought to be assessed upon it. From, this part of the decision, therefore, I think that no appeal lies.

7. The appeals and the cross-appeals are dismissed. The cross-appeals being of little importance, the respondents will be entitled to their costs.

N. Chatterjea, J.

8. I agree.