(1909) 04 CAL CK 0004

Calcutta High Court

Case No: None

Annada Prosad Mukhopadhya		APPELLANT
	Vs	
Mathura Lal Nag Mazumdar		RESPONDENT

Date of Decision: April 30, 1909

Judgement

Chitty, J.

This appeal arises out of a rent suit. The plaintiff sues to recover Rs. 2,790-3-15 as rent with cesses and interest for the years 1306 to 1309 under a pattah and kabuliat dated 2nd Joisto 1302 and executed by himself and the defendant respectively. The land leased to the defendant is described as Pargana Rangdia, a mehal bearing Towzi No. 163 in the District of Khulna, constituting a patni taluk, of which the plaintiff claims to hold exclusive possession.

2. By the pattah the land was estimated at about 800 bighas, 150 of which were regarded as garlaik or unfit for cultivation. For 68 bighas 17 Cottahs 8 chittaks the defendant agreed to pay from the outset the full rent of Re. 1 per bigha and road cesses at 1/2 anna in the rupee. The balance of 581 bighas 2 cottahs 8 chittaks he was to hold rent free from 1302 to 1304, and from 1305 he was to pay a progressive rent upon it commencing at 4 anns per bigha and culminating from 1308 in the full rent of Re. 1 per bigha. The 650 bighas are described as remaining after deducting about 150 bighas of unculturable land from about 800 bighas of monirtat, or, all sorts of mathan, khal, khaudak, hasil, and patit lands, with the exception of hazira and brahmottar lands. The pattah provides that whenever any quantity of land in the mehal should be found to be more on measurement the defendant should pay a proportionately higher rent. If it should be found to be less, he was to get a proportionate reduction. The schedule to the pattah gave the boundaries of the property in three lots measuring about 275, 190 and 185 bighas respectively. It is conceded that defendant is in possession of 799 bighas 7 cottahs 10 chittaks of land, that is to say, to all intents and purposes of 800 bighas, the amount mentioned in the pattah. It has, however, been found by both the lower Courts that the boundaries as given in the pattah, having especial regard to the Northern boundary,

the Plodder''s Road, would include a much larger area of about 1,500 bighas in all. Speaking from the map attached to the paper-book, defendant has possession of plots A. C. D. The boundaries would include also Ha. and Hb. to the north. It further appears that in Asarh 1305 plaintiff granted to one Rasik Lal Dutt, his naib''s nephew, a pattah of 350 bighas of land to the north of that leased to the defendant. It is said that under that pattah the lessee has actually possession of nearly 1,000 bighas from which it is argued that there would be nothing strange in defendant being entitled to 1,500 bighas under a pottah which mentioned 800. Defendant duly paid the prescribed rent up to the end of 1305. It is noticeable that at least two payments of Rs. 85 on 21st Pous 1305, and of Rs. 100 in 1307, were made after the lease to Rasik Lal Dutt. Defendant then objected to pay rent : on the :ground that plaintiff had not put him in possession of all the land demised. Plaintiff accordingly on the 14th April 1903 filed this suit. But the Courts below have concurred in dismissing plaintiff''s suit in toto on the ground that unless and until defendant is put in possession of the whole property demised, which they find to measure about 1,500 bighas, there must be a suspension of the rent and defendant is in no way liable to plaintiff. The only question for our determination is whether this view is correct. We must, I think, accept the finding of a lower appellate Court that the northern boundary of the land demised to defendant was the Poddar''s Road; in other words, that plots Ha. and Hb. should be included in his land making altogether 1,500 bighas; although it is at first sight somewhat startling that the land which the parties calculated roughly, no doubt, at 800 bighas should turn out to be nearly double that amount. It is true that speaking generally the boundaries given in a conveyance are the true criterion of the amount of land conveyed. It is not, however, an absolutely hard and fast rule. The true construction to be put upon a deed is that which will as far as is possible bring its several provisions into harmony with one another and express most nearly the intention of the parties see Herrick v. Sixly L.R. 1 P. C. 436. Here the learned Subordinate Judge is constrained to admit, (1) that the question of boundaries in the Sunderbans is always an uncertain one, and (2) that in this particular case if the northern boundary be taken as the road which both Courts find to be the Poddar''s Road, then the western boundary will be different from that given in the puttah. In these respects the finding is open to criticism. Bat accepting it, as we do, I cannot agree with the conclusion of the lower Courts that defendant is altogether absolved from payment of rent. Much reliance was placed by the respondent''s counsel on the case of Dhunput Singh v. Mahomed Kazim Ispahain 24 C. 296. In that case after discussing English cases bearing on the question of suspension of rent in consequence of the eviction of a tenant by his landlord, their Lordships deduced certain principles the correctness of which I do not wish to dispute. That case was followed in Harro Kumairi Chowdhurani v. Purna Chandra, Sarbogya 28 C. 188 and distinguished in Kali Prasanna Khasnabish v. Mathura Nath Sen 34 C. 191. Bach case, however, must be decided upon its own facts and I think that the facts of the present are so very different from the facts of the case in Dhunpat Singh v. Mahomed Kazim Ispahain 24 C. 296 as to make that case

inapplicable here. In the first place there was here no eviction of dispossession of property so called. Nor did the defendant at the commencement ever allege it; (see paragraph 2 of his written statement). The finding of the Sub-Judge is explicit on the point. There is no sufficient evidence "he says, of the actual dispossession, but it is a fact that it was defendants'' leasehold, but he was not allowed possession of the land." All that can be said is that the plaintiff did not give the defendant possession of land over and above the 800 bighas though more was included in his lease. Secondly, defendant entered into possession of 800 bighas and for nearly 4 years paid rent in the terms of the pattah; what is more, he went on paying rent even after he found that he was not to have this extra land. Now by law the lessor is bound to put the lessee in possession of the land demised. That is the general law, apart from Section 108 A (b) of the Transfer of Property Act which does not apply to this case. If he fails to do that, the lessee may say "very well, I will surrender my lease," or he may take steps to enforce the contract against the lessor. He cannot, I think, say, as he tries to say in this case, that he will hold what land he has in possession (which after all is the exact area by measurement that he contracted for), but will hold it rent free for all time. If knowing that the lessor cannot put him in possession of the remaining land demised, he keeps what he has got, it appears to me contrary to all principles of justice, equity and good con-science that he should not pay rent for it. It was argued that there could be no apportionment, because the effect of that would be to convert the plaintiff''s suit, which is one for rent under the lease, into a suit of another and inconsistent character, namely, one for compensation for use and occupation, a suit which negatives the existence of a tenancy. I do not think that there is any force in this contention. The tenancy is still subsisting and the claim is for rent under the lease, though in the nature of a quantum meruit. It is to be observed that the rent now due from the defendant for the land in his possession is very nearly the actual sum contemplated by the lease. If he were to get possession of the other 700 bighas, the rent would be very largely increased. I do not propose to enter upon an elaborate discussion of the English cases. It may be questioned how far the technicalities to be found in the English law should be allowed to affect the relations of landlord and tenant in this country. In one respect the principle underlying the English decisions appears to be inapplicable to the present case. Eviction is regarded as a wrong done by the landlord to his tenant for which the former is to be penalised. Here not only, as I have said, was there no eviction properly so called, but there is no proof of malafides on the landlord''s part. It may be that by a careless statement of boundaries in the two pattahs land which should be in-eluded in the defendant''s holding are also included in those of Rasik Lal Dutt''s. But that is all that can be alleged against the plaintiff. On the facts of this case as admitted and as found by the lower appellate Court, I think that the defendant has no defence to the plaintiff''s suit for rent. The only point remaining for determination is the precise amount. of the defendant''s liability. Under the pattah it is clear that he was to pay the rent at Rupee 1 per Jigha from the outset on 68 bighas 17 cottahs 8 chittaks with road cess at 1/2 anna in the rupee The rent and

cesses due in respect of the remaining 581 bighas 2 cottahs 8 chit-tales are also clearly stated in the pattah; what is not quite clear is from what area of the pazira brahmottar lands is to be deducted. We find that defendant admits to holding 32 bighas of Brahmottar land and no hazira land among the 799 bighas 7 cottahs 10 chittaks in his possession. The plaintiff puts it at only 14 bighas of brahmottar. In order to avoid a reference and further delay, I propose (and to this the plaintiff''s pleader consents) to give defendant credit in the present suit only for the 32 bighas of brahmottar land and to hold him exempt in this suit from payment of rent for the 150 bighas as specified in the pattah and 32 bighas brahmottar land, which he says, he holds, in all 182 bighas For the balance, that is, for 617 bighas 7 cottahs 10 clittaks defendant must pay rent and cess at the rates specified in the pattah. I do not think that it would be fair to tax defendant with interest at 12 per cent. per annum for so long a period. I think that the justice of the case will be met if we award plaintiff damages at the rate of 25 per cent, on his claim. I would, therefore, allow the appeal and pass a decree in favour of the plaintiff for an amount to be ascertained as above with costs in proportion in all Courts.

Vincent, J.

3. This appeal arises out of a suit to recover rent for the years 1306 to 1309 on account of certain lands held by the defendant under the plaintiff in a patni taluk of the latter in the district of Khulna.

4. The suit has been dismissed because both the lower Courts found that-the plaintiff had interfered with the possession of the defendant in a part of the lands demised to him. Against this decision, the plaintiff appeals and a number of points are raised on his behalf.

5. It is firstly argued that, in fact the defendant is in possession of all the lands leased to him and that the Courts below have wrongly found that plots Ha. and Hb. of the Commissioner''s map, now in the possession of the plaintiff are included in the defendant''s lease. It is further argued that, in the circumstances of the present case, as the boundaries of the lands leased to the defendant cannot be accurately identified, the area stated in the lease should be accepted as a correct indication showing what lands were leased to the defendant.

6. There is, to my mind, little force in this contention. There is a finding of fact that plots Ha. and Hb. are included, in the lands demised to the defendant the northern boundary of plot 3 of the lease is the Poddar''s Road. The position of that road has been ascertained and, if the position assigned to it by the Commissioner and both the lower Courts be accepted, plots Ha. and Hb. would apparently fall within the lands leased to the defendant. The learned pleader for the appellant then urges that 800 bighas of land were leased to the defendant and he is found to be in possession of 799 bighas odd, excluding plots Ha. and Hb. and that, therefore, the Court should consider that he is in possession of all the lands leased to him. This contention

cannot, however, be accepted; for it has always been held in India for obvious reasons that, where there is a description of land in a conveyance or lease setting forth the boundaries and specifying the area, the land within the boundaries passes by the deed. In the present case, the boundaries have been ascertained, and there is no reason why the lease should not be held to cover all the lands included within them. It is clear also from the wording of the lease that it was the intention of the plaintiff to lease to the defendant the lands included in the boundaries stated and, in the case of jungly lands in the Sunderbans, it is so difficult to survey lands that areas are always or nearly always entered by guess. I, therefore, think that there is no force in the argument of the learned pleader for the appellant on this point. It may also be noted that, in the case of another lease of a similar character, an Exhibit in this case, there is amisstatement of area of a far more serious character than in the lease, the subject of this suit,

7. It is then argued that, in any case, as the Courts below have not actually found that the plaintiff personally dispossessed the defendant from any of the lands demised to him and as the defendant has continued to occupy the remainder of the land so leased, he should at least, pay rent for the land in his possession and it is said that the oases in Dhunput Singh v. Mahomed Kazim Ispahain L.R. 1 P.C. 436 and Harm Kumari Chowdhrani v. Puma Chandra Sarbogya 24 C. 296 referred to in the lower Courts judgment were decided on principles of English law which are entirely inapplicable in this country. The learned pleader has further pointed out that, the cases on which reliance has been placed by the lower appellate Court are clearly distinguishable from the present case. There seems to me to be much force in many of these contentions. The cases referred to by the learned Subordinate Judge are cases in which a landlord is penalized for a wilfully wrongful act and this, as I understand it, is the principle on which the English law on the subject is based. In the present case, there is, if I correctly interpret the judgment of the lower Court, no finding that the action of the landlord was wrongful. There was a difference of opinion between him and the defendant as to the actual lands leased out to the latter; and that is all that can be said. It seems, therefore, that it would be unfair to penalize the plaintiff in this case in the manner adopted by the lower Courts. In the next place the defendant in this case has elected after the lands in plots Ha and Hb. were settled with the new lessee to retain possession of the rest of the lands demised to him and even to pay rent for the same. The dispossession occurred in 1905 according to paragraph 3 of the written statement.

8. Nevertheless, after this date, the defendant has continued to occupy the remainder of the lands leased to him and is apparently now in possession of them, and he has also paid a portion of the rent for the years 1305 and 1306 according to the receipts. It is not now open, therefore, to the defend-ant to allege that he cannot be made liable for the rent of any period after the date on which plots Ha. and Hb. were leased out to Rasik Lal Dutt. When this new lease was effected, it was open to the defendant to repudiate the whole contract with the plaintiff and to give up all

the lands or to sue the landlord for specific performance of his contract or for damages and continue to occupy the rest of the property demised but he cannot at the same time occupy for an indefinite period a large portion, of the lands leased to him and refuse to pay rent for the same. Even under the English law, it is open to doubt if he could not under such circumstances, be liable to pay compensation for use and occupation vide the case of Stokes v. Cooper 3 Camp. 514 referred to in Foa on Landlord and Tenant p 168; and certainly, in India, there appears to be no reason why he should not be sued for rent in the ordinary way; the more so as it is shown in this case that, since the lease to Rasik Lal Dutt, the defendant has not only remained in occupation, but has also paid rent to the landlord by which acts a tenancy of the lands in his occupation is clearly established.

9. Lastly it has been argued that, in the present case, there was no direct eviction by the landlord, but that all that was found amounted to this that the defendant had been prevented from taking possession of plots Ha. and Hb. by a new lessee under the plaintiff and that this would not entitle the defendant to withhold the payment of rent vide the case of Kali Prasanna Khasnabish v. Mathura Nath Sen 34 C. 191. and it is probable that if that case was rightly decided, this view is correct. It would appear very difficult to reconcile that case with the principles on which their Lordships acted in the case of Dhunpat Singh v. Mahomed Kazim Ispahain 24 C. 296. In the latter case, the principles of the English law were followed and, if the same principles be accepted in a case where the tenant is ousted by a new lessee under his landlord, it might reasonably, I think. be said that the eviction was by the procurement of the landlord (vide Foa on Landlord and Tenant, pp. 166 and 167). I am, therefore, not able to see very great force in this contention unless it be taken that it was not the landlord''s intention in granting the new lease that the prior lessee should be evicted, but only that the title in the lands in dispute might be adjudicated upon in a suit between the two claimants. But having regard to the other points already dealt with, I think that, in any case, this appeal must succeed.

10. It is possible that, in the case in Kali Prasanna Khasnabish v. Mathura Nath Sen 34 C. 191 their Lordships felt that it was in every way inequitable that no rent should be paid for lands admittedly held and, therefore, they gave the plaintiff a decree and it is to be noticed that, oven in the case reported in Dhunput Singh v. Mahomed Kazim Ispahain 24 C. 296 a partial decree was a warded to the plaintiff, although really the rental in that suit was a consolidated rental of a patni tenure made up of various demands on particular villages.

11. In these circumstances, I am of opinion that the plaintiff is entitled to recover rent from the defendant for the lands occupied by him less certain deductions. Under the terms of the lease, the defendant is entitled to deduct 150 bighas out of the area in his possession on account of uncultivable lands and possibly he is also entitled to a further deduction on account of haazira and brahmottar lands. The defendant''s pleader has filed a statement showing that there are actually no hasira

lands in the area now in the occupation of the defendant. but that 32 bighas of brahmottar land are included in the said area. The plaintiff''s pleader consents that this area of the brahmottar land should be accepted for the purposes of the present case. The plaintiff will, therefore, get a decree for rent of the balance of the area in the possession of the defendant after deduction of 182 bighas at the rates specified in the lease for the period claimed, with damages at 25 per cent and proportionate costs in all the Courts.

12. It may be noted that the defendant is, under his kabuliat, liable to pay excess rent for any land found in his possession in excess of the area stated in the deed. It is, therefore, clear that the assessment of rent in this case was to vary with the area actually found to be included within the boundaries mentioned in the case.