Rashmoni Bewa and Others Vs Dhirendranath Roy and Others

Court: Calcutta High Court

Date of Decision: Aug. 2, 1928

Citation: AIR 1929 Cal 397

Hon'ble Judges: Page, J; Mallik, J

Bench: Full Bench

Judgement

Mallik, J.
The only point of law that arises in this appeal is whether the plaintiffs, who are 13 as. 4 gds. co-owners of the property within

which the land in suit lies, wore entitled to bring a suit for enhancement of rent. The suit was based on a kabuliyat executed by the defendants in

favour of the plaintiffs. We have been taken through the terms of this document. Having regard to the terms of this kabuliyat, we are of opinion that

the case is governed by the, principles laid down in the cases of Gobind Chandra Pal v. Hamidulla Bhuian 7 C.W.N. 670 Darik Dhakai v. Aswni

Kumar 18 C.W.N. 942 and Joghesh Prokash Ganguli v. Maniraddi [1908] 35 Cal. 417. In this view of the matter the appeal fails and must be

dismissed with costs.

2. There has been a cross-objection filed on behalf of the plaintiff-respondent and on his behalf it was contended that the lower appellate Court

was wrong in giving to the plaintiff a decree at the rate of the talab jama after deducting the hajat of Rs. 40 instead of giving a decree at the full rate.

It appears that in the Kabuliyat in para. 1 of the document the annual rent was stated to be Rs. 62 odd and after deduction of Rs. 40 as hajat on

the ground of some lands being patit, the talab jama was put down as Rs. 22 odd. It was urged on behalf of the plaintiff respondent that it was

within the rights of the landlord to withdraw this hajat at any time he liked. In view, however, of the terms as embodied in para 1 of the kabuliyat,

we are unable to give effect to this contention. The provision about hajat was made on the ground of patit lands and that being so, it is, in my

judgment, pretty clear that this hajat concession was meant to continue so long as the lands which were found to be patit at the time of the lease

would remain patit and that the landlord would not be entitled to withdraw this hajat concession unless and until he could show that the land which

was found to be patit at the time of the lease or any portion thereof had, since the execution of the document, come under cultivation In the present

case there is nothing to show that any portion of the land which was found to be patit at the time of the lease have been brought under cultivation

since the execution of that document. That being so, we are of opinion that the tenant defendant was entitled to this hajat remission and in this view

of the matter, the cross-objection must fail and is dismissed.

Page, J.

3. I agree.