(1921) 05 CAL CK 0003

Calcutta High Court

Case No: None

Gobinda Chandra Ganguli and Another		APPELLANT
	Vs	
Manmatha Nath Pal Choudhury and Others		RESPONDENT

Date of Decision: May 17, 1921

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 109A

Citation: 62 Ind. Cas. 677

Hon'ble Judges: Lancelot Sanderson, C.J; Richardson, J

Bench: Division Bench

Judgement

Lancelot Sanderson, C.J.
This is an appeal from the judgment of the learned District Judge of Nuddea, sitting as a Special Judge within the meaning of Section 109A of the Bengal Tenancy Act and, the learned Judge was hearing certain rent appeals from the Revenue Officer of Krishnanagore. In this appeal we have to consider one only of those appeals, namely, Specialy Rent Appeal No. 380 of 1917 in case No. 157 of 1912 13.

2. Before the learned Judge the tenants Gobind Chandra Ganguly and Gopal Chander Ganguly were the appellants, and the landlords or the landlords'' representatives were the respondents and in this Court the position is the same, namely, the tenants are the appellants. At the commencement of the argument we directed the record to be amended by adding one of the executors of one of the deceased respondents, whose came had been omitted by inadvertence.

3. Mr. Chuckerbutty, the learned Vakil for the respondents, took a preliminary point that in this case there was no right of appeal to the High Court by reason of Section 109A(3) of the Bengal Tenancy Act. I will first read Sub-section (1), which runs as follows: The Local Government shall appoint one or more persons to be a Special

Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue Officers under Sections 105 to 108 (both inclusive)." Sub-section (3) provides as follows: "Subject to the provisions of Chapter XLII of the CPC (Sections 100-103, Act V of 1908)an "appeal shall lie to the High Court from the decision of Special Judge in any ease under this section (not being a decision settling a rent) as if he were a Court subordinate to the High Court within the meaning of the first section of that Chapter." The learned Vakil urged that the learned Judge''s judgment in Appeal No. 380 was merely a decision settling a rent."

4. The learned Vakil for the appellants urged two points in this appeal, first, that his clients were raiyats holding the land and promises at a fixed rent and that the learned Judge had come to a wrong decision upon that point. By Section 105, Sub-section (4), it was provided that--"In settling rents under this section, the Revenue Officer shall presume, until the contrary is proved, that the existing rent is fair and equitable and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be." And, the second point the learned Vakil for the appellants urged was that although the learned Judge had had regard to the rules laid down in the Act, inasmuch as he had referred to them in his judgment and had considered them, he had gone beyond them, and the learned Vakil argued that that Sub-section mast that the Revenue Officer in the Appellee Court was absolutely bound by the rules which were laid down in the Act.

5. In my judgment it is not necessary for us to deal with this point, because in my judgment the learned Vakil for the appellant is entitled to succeed on the first point: and, I would merely add this that if the appeal had been limited to this second point, in my judgment there would have been no right of appeal, because the decision of the learned Judge would have been "a decision settling a rent" and nothing more, within the meaning of Section 109A(3). Having regard to the first point which the learned Vakil has taken and which was clearly in issue before the learned Judge, in my judgment the appeal does lie. The position was that the landlord was, on the one side, urging that the tenants were merely raiyats whose rent was liable to be enhanced: on the other hand, the tenants, (the appellants in this Court), were urging that they ware raiyats with a fixed rent which was not liable to be enhanced, In my judgment, that was a point which had to be decided by the learned Judge, before he could make up his mind whether he was to apply the provisions of Section 105 of the Bengal Tenancy Act to the case in question. In my judgment, having regard to that point, the judgment of the learned Judge was not merely a decision settling a rent." Consequently, there is a right of appeal, in respect of that matter, to this Court.

6. On the merits the learned Judge''s decision on this part of the case is comprised in five lines. It runs as follows: "Re the tenants'' appeal: In Nos. 380, 384 and 385 the receipts filed in these cases do not show that the same rent has bean paid for a

period of 20 years before the institution of the suit, so there is no presumption of fixity of rent u/s 50 of the Bengal Tenancy Act."

7. The learned Vakil for the appellants has urged upon this Court that the learned Judge has misconceived the question which arises u/s 50 of the Bengal Tenancy Act. It is urged that the question is not whether the same rent has been paid for a period of 20 years before the institution of the suit, but the question is whether the tenants or their predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding. It is possible, it is urged, that although the tenants may have been holding at a particular rate of rent during a period of 20 years prior to the institution of the suit, which rate of rent has not been changed, they may not have paid that rent for the period of 20 years. Therefore, the two questions are not the same. The learned Vakil on the other side urged that the learned Judge was not mistaken as to the question and that he in effect decided that the tenants had not been holding at a rate of rent which had not been changed for twenty years before the institution of the suit. In my judgment the contention of the learned Vakil for the appellants is correct, because when we look towards the end of the judgment, the learned Judge in dealing with another case has put the point more clearly. He has said: "The existing rent as shown by the khatian is the same and there is no reason to suppose that the rent varied between 1313 B.S. and the institution of the suit: at the same time the onus was on the defendant to show positively that the rent was paid for a period of 20 years previous to the institution of the suit." Consequently, in my judgment, this appeal must succeed on the ground that the learned Judge has not stated correctly the point which he had to decide.

8. Then the only question which remains is, whether we can decide the question ourselves upon the record as it stands, or whether, on this question, it is necessary for this Court to remand the case to the lower Court. I regret that it is necessary to remand it, for this reason that Sub-section (2) of Section 50 provides that "if it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors-in-interest have held at a rent or rate of rent which has not been changed daring the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:" and Sub-section (1) provides, "where a tenure-bolder or raiyat and his predeessors-in-interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding," It is to be noticed that there are the words "until the contrary is shown." Now it appears that the only witness who was called for the plaintiff in cross-examination stated, with regard to the three holdings of these tenants, that "the rent payable for these holdings," which were in possession of Gobinda and Gopal (who are the tenants), "has not been changed within my knowledge, i.e.,

within the last 25 or 26 years." If the matter had stopped there, we would have been able to decide the question ourselves. But the learned Vakil for the respondents has pointed out that one of the defendants in his evidence, which has been read to us, stated that bis father had taken a lease from the landlords. We do not know when that lease was taken, we do not know its terms and it may be that that lease, the terms of it and the evidence with regard to it may be sufficient to rebut the presumption which would arise in consequence of the above-mentioned evidence of the plaintiffs'' witness: On the other hand it may not be sufficient. At the present moment we have no materials before as to decide that question. Therefore, although I much regret it, there is no alternative but to remand this question for farther consideration by the lower Appellate Court. Consequently, in my judgment this appeal must be allowed, the decree of the lower Appellate Court set aside and the matter mast be remitted to that Court for the purpose of deciding the issue (and that issue only) which I have intimated in my judgment, and having regard to the observations in my judgment.

9. All costs, that is to say, the costs of this appeal, those which have been incurred in the Courts below and the costs which will be incurred in the re-hearing, will be in the discretion of the learned Judge in the lower Appellate Court.

Righardson, J.

10. I agree.