(1914) 02 CAL CK 0006

Calcutta High Court

Case No: Appeals from Original Decrees Nos. 178 and 179 of 1910

Srinibash Proshad Singh		APPELLANT
	Vs	
Ram Raj Tewary and another		RESPONDENT

Date of Decision: Feb. 5, 1914

Final Decision: Allowed

Judgement

1. These Appeals arise out of two decrees in two suits which were tried together. The Plaintiff sued on two kabuliyats, one executed on the 10th November 1903 and the other on the 8th March 1905. They were couched in similar terms. The defence set up by the Defendants is that a great portion of the land which they took under the kabuliyats has either been washed away by the river or rendered unfit for cultivation by reason of the accumulation of sand and other matters upon it. Looking into the case from the point of view of facts it is necessary for the Defendants to prove that the land became unculturable during the whole or part of the period in respect of which the Plaintiff is suing for his rent. This, the Defendants have, in our opinion, failed to do. Their case, as made out in the written statements as amended by their subsequent petition, and by their evidence, is that the damage was done to the land referred to in the kabuliyats in 1311 which is equivalent to 1904, that is to say, at all events after they had executed the first kabuliyat and before they had executed the second. If the land had been so damaged it is impossible to suppose that they would have executed the second kabuliyat after the damage was done. We therefore cannot place any reliance on the evidence given by the Defendants or that of their witnesses as to the date of the damage caused. They have therefore failed to prove that the damage was caused during the period in suit. The land was investigated by an officer of the Court below after the actions had been brought, at a reasonably early opportunity and there is no doubt that in a holding of 200 bighas there were then found only 8, culturable, and in another holding of 229 bighas there were only 28 bighas found culturable. The damage therefore must have been caused before them, but the Defendants have failed to prove, as they should have proved in order to establish their case, when the damage

did actually occur. The Defendants'' case therefore must fail in point of fact. Nor would their case be any better if the contention advanced as to the date of the damage to the land in question were allowed to prevail. The two kabuliyats which are in the same form contain clauses which we read as providing that neither celestial or terrestrial disturbances nor any village practice or usage not specified in kabuliyat shall be allowed as a ground for non-payment of the full rent reserved. No custom or usage of the village is so specified. In the first place the Defendants set up before the lower Court a plea that there was a custom in the village that when lands were damaged by the river, reduction should be made in the rent: and this contention was allowed by the Court below. In this, we think the lower Court was wrong; for, in the first place, such a claim is met by the specific provision in the kabuliyat which we have just quoted. In the second place it is met by the fifth proviso to sec. 92 of the Evidence Act. The Defendants therefore can make no case on the point of custom in the village.

2. In the next place, the Defendants rely on the provisions of sec. 52, cl. (1), sub-cl. (b) of the Bengal Tenancy Act and say that they are entitled to a reduction of rent, on it being proved that there is a deficiency in the holding which they took under the kabuliyats. The answer, however, to this contention is to be found in sec. 180 of the Bengal Tenancy Act wherein it is provided, that notwithstanding anything in the Act, a raiyat who holds diara lands (and these lands are admitted to be diara lands) does not acquire any right of occupancy till he has occupied them for 12 continuous years; and that until he acquires such right he is liable to pay such rent for his holding as may be agreed upon between him and his landlord. In this section the words "his holding" must be taken to mean the holding as he received from his landlord, and consequently the provisions of sec. 52 of the Bengal Tenancy Act to which we have referred, do not apply. After a careful consideration, we are of opinion that this is the effect of the words of the section as they stand. There is no direct authority on the point, but the view which we have expressed is consistent with the application of the section which was given effect to in a decision in the case of Jahander Baksh Mullik v. Ram Lal Huzra 14 C.W.N. 470 (1910).

3. The result is that these Appeals must be allowed and the landlord is entitled to his full rent for the two holdings for the period in suits, that is to say for the full amount claimed in the plaint. The Appellant is entitled to his costs in this Court and also in the Court below.