

(1878) 01 CAL CK 0004

Calcutta High Court

Case No: None

Holodhur Pal

APPELLANT

Vs

Ekram Mundul and
Others

RESPONDENT

Date of Decision: Jan. 9, 1878

Citation: (1878) ILR (Cal) 271

Hon'ble Judges: Richard Garth, C.J; Birch, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

We think that this appeal should be decreed. The facts of the case are correctly stated in the decision of Mr. Justice Ainslie; and we quite agree with that learned Judge, that before the plaintiff in this case (the landlord.) could sue the tenant for increased rent, upon the ground that the land demised consisted of more than 47 bigas and 5 cottas, he was bound to give the defendant a previous notice that the increased rent would be required of him.

2. It seems to us that this notice was rendered necessary by Section 14 of Beng. Act VIII of 1869; because we have had the lease in question read, and it appears to be one "not specifying the period of the engagement;" so that, until he had received such a notice as the section requires, the defendant could not be called upon to pay a higher rent than he did in the year preceding the suit. Mr. Justice Ainslie considers that the defendant was entitled in this case to some notice, though he thinks that Section 14 does not apply. But the learned Judge proceeds to say that the defendant did in fact have sufficient notice that the increased rent was payable, because in the former suit, which the plaintiff brought against the defendant for rent in the year 1870, a measurement of the demised lands was made at the instance of the defendant, the result of which was that the land was found to contain an excess of 11 bigas 16 cottas beyond the quantity mentioned in the lease.

3. Now, in order to see how far the defendant was bound by this measurement, and how far the fact that he knew of its being made was a sufficient notice to him to enable the plaintiff to bring this suit, we must first see what was the nature of the former suit. It was a suit by the plaintiff to recover from the defendant the rent originally fixed by the lease. The defendant pleaded that the actual quantity of land was less than that estimated in the lease, and consequently that he was entitled to an abatement. In order to ascertain the correctness of this plea, an ameen was appointed by the Court to measure the land; and the land upon measurement was found to contain more, instead of less, than the estimated quantity; the excess being 11 bigas 16 cottas. Upon this the plaintiff obtained a decree, not for any excess rent, but for the original rent for which he had. brought his suit, the Judge holding very properly that he could not decree him a larger rent than he had claimed in his plaint. But it follows from this that the judgment in that suit, whatever the evidence of the ameen or the observations of the Judge may have been, was only conclusive between the parties upon the question whether the land demised was or was not less than, or equal to, the estimated quantity. Whether it was more than the estimated quantity, was a question immaterial to the suit, and one which from the very nature of the issue the Judge could not, and did not, decide. Perhaps the best test of this is, that if the defendant had desired to call evidence at the trial to disprove the excess, or to appeal from the judgment, upon the ground that in fact the land did not exceed the estimated quantity, he could not have done so; that point being immaterial to the purposes of the suit.

4. In the case referred to by Mr. Justice Ainslie--*Nobo Doorga Dassee v. Foyzbux Chowdhry* ILR 1 Calc. 202 : 24 W.R. 403--the point decided in the first suit was necessary to the due determination of the issues in both suits, and therefore the judgment in the one case was held to be binding in the other. But here it is not so. We consider, therefore, that the measurement found by the ameen, and adopted by the Court in the suit of 1870, was not, as regards the excess, binding upon the defendant. But even supposing it were, we think it clear that the judgment in the former case, although known to the defendant, would not be a sufficient notice to him by the landlord u/s 14 of Beng. Act VIII of 1869. That notice is required to be in a particular form, and served a certain time before any suit can be brought for the excess rent; and the obvious intention of the Legislature, as it seems to us, was, that the tenant, before he could be sued for any higher rent than he had previously paid, should have notice, not only that such rent might be demandable, but that his landlord intended to demand it.

5. The fact of the land having been measured and found to contain more than the estimated quantity would be no sufficient notice, in our opinion, that the landlord intended to insist upon the higher rent.

6. We are of opinion, therefore, that the original judgment of the Court of first instance, giving the plaintiff a decree for the original rent and rejecting the claim for

the excess rent, was correct; and that all subsequent judgments should be reversed, the defendant being entitled to his costs in all the Appellate Courts, and also of the second trial before the Munsif in the Court of first instance.