
Hosenjan Choudhuri Vs Mirza Mahafeduddin and Others

None

Court: Calcutta High Court

Date of Decision: Aug. 16, 1920

Acts Referred:

Bengal Tenancy Act, 1885 " Section 29

Citation: 62 Ind. Cas. 619

Hon'ble Judges: Panton, J; Newbould, J

Bench: Division Bench

Judgement

1. This is an appeal against a decree dismissing a rent-suit on the ground that it was bad for defect of parties. The plaintiff sued on a kabuliyat

which was executed by two defendants. Various defences were raised that the kabuliyat had been taken by coercion and that the provisions of

Section 29 of the Bengal Tenancy Act were contravened. Both these points were decided in favour of the plaintiff.

2. It appears that there were several holdings which belonged to the defendants and also to the defendants' mother and sisters. These holdings, it is

found, were combined into one holding, and then the defendants executed a kabuliyat agreeing to pay a rent enhanced by annas two in the rupee in

excess of the total rent of all the original holdings, It is also found that the landlord wished to join the defendants' mother and sisters in the

kabuliyat, but he did not do so in order to avoid expense and trouble in getting the kabuliyat registered by them. In our opinion the learned

Subordinate Judge was wrong, on the simple ground that the plaintiff sued on a contract and made all the parties to the contract parties to the suit.

3. The learned Vakil for the respondents was unable to show us any case in which a suit for rent based on a kabuliyat had been dismissed for

defect of parties when all the executants of the kabuliyat were parties to the rent-suit. Had we not held that the appeal was entitled to succeed on

this simple ground, we should have been compelled to send the case back for re consideration of the question, whether the defendants in executing

this kabuliyat represented all the co-sharers in the holding. We are unable to understand the remark of the learned Subordinate Judge that there is

no evidence in the case showing that the defendants represented their mother and sisters in respect of the jote. On the admitted facts there is

enough to support the strong presumption that these defendants did represent their co-sharers. We think that as this suit was brought on a

kabuliyat, it was not necessary to consider the question as to the liabilities of some co-sharers for rent of the entire holding in a suit in which all the

co-sharers were not joined.

4. The only other point urged on behalf of the respondents is that u/s 29 of the Bengal Tenancy Act, when the rent of an occupancy holding is

enhanced by contract, that contract must be in writing and registered, in the present case the kabuliyat provided for enhanced rent from the year

1320 B.S. and was not executed until Bhadra 1323 B.S.

5. It is contended that the rent could not be enhanced until after the kabuliyat had been executed. We can see nothing in Section 23 which would

be a bar to a duly registered agreement, complying with the other terms of that Section, taking effect for a period prior to the date of its execution.

Section 29 provides for an enhancement of rent, rent being whatever is lawfully payable by a tenant to his landlord on account of the occupation of

the land held by the tenant. We see no reason why the word "rent" in Section 29 should not include rent for a previous period which was already

due but which was not paid. Taking this view of the case, we hold that the plaintiff was entitled to a decree for the amount which he claimed.

6. We accordingly decree this appeal, set aside the judgment and decree of the lower Appellate Court and restore the decree of the Munsif.

7. The appellant will get his costs in this Court and in the lower Appellate Court.