

(1881) 02 CAL CK 0003

Calcutta High Court

Case No: None

Gour Chunder Shaha
and Another

APPELLANT

Vs

Nobin Chunder Sircar
and Another

RESPONDENT

Date of Decision: Feb. 15, 1881

Citation: (1881) ILR (Cal) 759

Hon'ble Judges: McDonell, J; Field, J

Bench: Division Bench

Judgement

McDonell, J.

Now it appears to us that the plaintiffs are not entitled to succeed in this suit. It may be well to point out in the first instance that the case of the plaintiffs is, not that the defendants, holding over after the expiry of the term of the kabuliat, are bound by the conditions of the kabuliat, and are, therefore, liable to pay rent according to the terms of that instrument, nor is it contended that the defendants have refused to grow indigo, and are, therefore, liable, under the penalty-clause, to pay the rent fixed by the decree. As a matter of fact, the plaintiffs do not seek to enforce the conditions of the kabuliat in any way. Their contention is that, on the expiry of the term of the kabuliat, the enhancement decree of 1864 revived, and has full effect.

2. In the first place, it is to be observed that this decree does not contain any direction as to the time for which it is to have effect. Those who are conversant with the history of the law of enhancement of rent in this Presidency, are well aware that there has been some discussion and difference of opinion as to the length of time for which the Courts have authority to fix enhanced rent.

3. Then, in the next place, the parties did not, when executing the kabuliat, make any stipulation to the effect that, upon the expiry of the term of the kabuliat, the enhancement decree should survive and have effect. It would no doubt have been competent to the parties to have provided in this manner for what was to take place

on the expiry of the term of the kabuliat, but they did not do so; they did not provide for the contingency by their own contract, and we have, therefore, to see how the position of the parties is affected by the law of landlord and tenant.

4. It appears to us, that the arrangement embodied in the kabuliat had the effect of superseding the enhancement decree; and that, upon the expiry of the term of the kabuliat, if the plaintiffs seek to enhance the rent, they must do so by having recourse to the procedure laid down by Beng. Act VIII of 1869.

5. The notice served by the plaintiffs upon the defendants is, admittedly, not such a notice of enhancement as is required by the provisions of this Act. It is merely a notice calling upon them to pay the rent decreed in 1864. Then, having regard to the provisions of Section 5 of the Act, in cases of dispute between the parties, the rent previously paid by the ryot is to be deemed fair and equitable, unless the contrary be shown by either party in a suit under the Act. Now the rent previously paid in this case is the rent payable under the kabuliat; and we think, that if the plaintiffs seek to recover a higher rent than that so previously paid, they must proceed under the enhancement provisions of Beng. Act VIII of 1869.

6. The appeal will, therefore, be decreed with costs of both Courts.