

(1922) 02 CAL CK 0041

Calcutta High Court

Case No: None

Sarat Chandra De Das
and Another

APPELLANT

Vs

Tarapasanna
Bhattacharyya and
Another

RESPONDENT

Date of Decision: Feb. 1, 1922

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 105

Citation: AIR 1923 Cal 141 : 70 Ind. Cas. 437

Hon'ble Judges: Cuming, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. This is an appeal under Clause 15 of the letters Patent from the judgment of Mr. Justice Panton in a proceeding u/s 105 of the Bengal Tenancy Act for assessment of fair and equitable rent in respect of the land of the disputed tenancy. The appellants were recorded as occupancy raiyats in the Record of Rights. Thereupon the landlords-respondents applied under Section 105 for settlement of fair and equitable rent. The tenants contended that the entry was erroneous and that they were in fact tenants at a fixed rate of rent. The Assistant Settlement Officer came to the conclusion that, as the defendants had failed to prove that they held at the same rate of rent for 20 years, they were not entitled to the benefit of the presumption mentioned in Section 50. Upon appeal the Special Judge reversed that decision. His conclusion was that, as the rent had not been varied for over 20 years, the tenants were raiyats at a fixed rate of rent. On second appeal to this; Court Mr. Justice Panton has reversed that decision and has restored the decree of the primary Court.

2. The judgment of Mr. Justice Panton has been attacked on two grounds, namely, first, that he had no jurisdiction to hear the appeal u/s 109A of the Bengal Tenancy

Act, and, secondly, that the judgment of the Special Judge could not be successfully assailed in second appeal. In our opinion, there is no foundation for either of these contentions.

3. As regards the first point, it is plain that the decision of the Special Judge did not determine merely the "amount of fair and equitable rent. It was in essence a decision upon the question of the status of the tenant. Such a decision, it is now well settled, is liable to be challenged by way of second appeal to this Court: *Jnanada Sundari v. Abdur Rahman* 33 Ind. Cas. 148 : 43 C. 603 : 23 C.L.J. 281 : 20 C.W.N. 428.

4. As regards the second point, the facts may be briefly stated. The allegation of the tenants is that they held at a uniform rate of rent for more than 20 years and were consequently entitled to the benefit of the presumption mentioned in Section 50. The Special Judge has found that payment of rent at a uniform rate for more than 20 years was established and that the tenants must consequently be deemed to be raiyats at a fixed rate of rent. This, however, does not settle the controversy between the parties. It is open to the landlords to rebut the presumption which arises in favour of the defendants, and they contend that the presumption is rebutted by the contract of tenancy between the parties dated the 1st February 1891. This contract recites that the tenants had been in occupation from before and that at the request of the landlords documents were exchanged between them. One of the covenants was expressed in the following terms: "After the term, I shall abide by whatever settlement you make after measurement according to the rate of rent payable for the land of the village and cultivable land." Mr. Justice Panton has held that this is a contract which entitles the landlords to claim rent from the tenants after the expiry of the term of the lease at the rate of rent payable for the cultivable lands of the village. It cannot be disputed that this is the correct interpretation of the terms of the contract between the parties, and the document so interpreted rebuts the presumption mentioned in Section 50. This is in accordance with the view adopted in the case of *Upendra Nath Ghose v. Dwarkanath Biswas* 44 Ind. Cas. 593 : 22 C.W.N. 322.

5. Our attention has finally been invited to a finding in the judgment of the Special Judge to the effect that the tenants had held at the same rate of rent for more than 20 years; and it has been argued that this implies that at the date when the document was executed the tenants had already acquired the status of raiyats at fixed rates. We do not think that this contention is well-founded. There is in fact no evidence to show that rent had been paid at a uniform rate for more than 20 years prior to 1890. But even if such evidence had been available, it would not have advanced the case of the tenants. Assume for the moment that the tenants had the status of raiyats at a fixed rate of rent in 1890. It was unquestionably open to them to accept a tenancy on new terms: *Gotuck Chunder Roy v. Sandes* 5 W.R. Act. X. Rul. 32 nor would Section 178 affect the validity of such new contract.

6. Our conclusion consequently is, that neither of the two grounds urged on behalf of the appellants can be supported and the judgment of Mr. Justice Panton must stand confirmed. The appeal is dismissed with costs.