

(1865) 06 CAL CK 0005

Calcutta High Court

Case No: Special Appeal No. 2577 of 1862

Mussamat Farzhara Banu and
Others

APPELLANT

Vs

Mussamat Azizunnissa Bibi and
Others

RESPONDENT

Date of Decision: June 5, 1865

Judgement

Trevor, J.

The plaintiff in this case was a sub-talookdar who held his tenure by virtue of a contract with his superior holder, the lakhirajdar. At the time at which that contract was entered into, which on the statement of the tenant was before the acquisition by Government of the Dewanny, the lakhirajdar's estate was not subject to the payment of revenue. Subsequently the Government resumed the property and assessed it with revenue. Certain proceedings have been brought before the Court into which it is not necessary here to enter; it is sufficient to state that the result of a case under Act IV of 1840 has placed the defendant, the zamindar, in possession. The plaintiff therefore sues in the present case for possession of his shikmi talook, of which he had been illegally dispossessed under the operation of Act IV of 1840. The defendant below pleads that the plaintiff held no shikmi talook in his estate, and that if he did previously to the resumption of the lakhiraj holdings, the title of the plaintiff to an under-tenure had lapsed, as repeatedly ruled by the late Sudder Court. Both the lower Courts dismissed the plaintiff's suit, on the ground that, in the absence of express special condition in the lease of the plaintiff under the rulings of the Sudder Court in the case of Mohunt Sheo Doss v. Bibi Ikram and Bibi Nusseerun S.D.A. Rep., 1850, 167, decided on the 2nd of May 1850, it had fallen in and become void on the resumption of the lakhiraj tenure. Two Judges of this Court, on the matter coming before them in special appeal, dissented from the ruling of May 1850 above cited, on which the judgment of the lower Court was based, and also from another decision passed on the 25th June 1860 in Anundmoyee Chowdrain v. Ramkunth Sein Id., 1860, 660, 661, which seems to confirm the previous ruling. They

have therefore referred the question to a Bench of five Judges this judgment bears the signature of the four Judges only whose names are given, at the head of the case. No other judgment is recorded.

2. When a lakhirajdar has entered into a contract with a tenant, whether for a term or in perpetuity, both parties are in strict law bound to the conditions of the contract. We, therefore, do not think that the mere resumption of the lakhirajdar's tenure by Government--that is, the mere fact that that tenure has been rendered liable for the payment of revenue--can of itself, as a matter of law, dissolve the contract entered into by the two parties. Looking to the unexpected and unforeseen nature of the Government act, which has declared that a certain proportion of every biga of the tenure must be paid in perpetuity to Government by the zamindar, it appears to us that, although it may be at the option of the tenant to determine the tenancy, he may consent that what the vis major of Government has taken from the land shall be added to the original engagement, so as to enable the zamindar to hand over the same to Government, and thus the parties will be left, as between themselves, exactly in the position in which they were before the resumption. The under-tenure, as to its duration, will not be interfered with; but during its currency, the revenue which has been assessed on the lakhirajdar will be added to the original jumma. But the tenant is, we think, at liberty to throw up his lease, if he declines to enter into any engagement with the lakhirajdar, now become the owner of a revenue-paying estate. If a tenant, under the circumstances now before us, asks for relief from the Court, we think that, as he who requires equity must do equity, he is not entitled to be reinstated in his former position, leaving the zamindar the whole burthen of discharging the Government revenue. We do not consider ourselves on the present occasion required to pronounce our opinion whether, in the event of the tenant declining to come under any obligation for the payment of the Government revenue, he has a right to be maintained in his holding on any other, or what, equitable terms.

(1) Repealed by Act XVII of 1862, as to places in which the Code of Criminal Procedure is in operation.