(1868) 07 CAL CK 0012

Calcutta High Court

Case No: Special Appeal No. 8456 of 1867

Brajanath Pal Chowdhry		APPELLANT
	Vs	
Hiralal Pal		RESPONDENT

Date of Decision: July 8, 1868

Final Decision: Dismissed

Judgement

Phear, J.

This is a suit brought by a putnidar to obtain an abatement of rent from his zemindar. It appears to be undisputed, that a certain mehal called a Bil, originally formed a portion of the land, which was leased to the present plaintiff by the zemindar under the putni-pottah. Since the first execution of that pottah, under which, I may mention by the way, the defendant enjoyed possession of this Bil for a time, the title of the zemindar to the Bil mehal has terminated, and the present plaintiff has been evicted from possession of it by a claimant under a title paramount. The Government to whom it belonged, in reversion upon an ijara held by the zemindar, has sold it to a third party, and the purchaser has taken possession. On that state of facts alone, it is clear, I think, that the plaintiff is entitled to an abatement of rent from his zemindar. It must be taken, that when a landlord leases any portion of land without any further stipulation with regard to the title, he does thereby impliedly undertake that he has sufficient title to support the lease, and he guarantees the tenant quiet possession and enjoyment. That is the result of the law in England, and I believe that it has always been held to be the same here. Therefore, on the facts which have occurred, and on the footing of the original pottah alone, it seems to me, that the plaintiff has a good cause of suit for abatement of rent. Much has been made in this case of a certain ikrar which was executed by the parties after the execution of the original pottah, and if the ikrar were really in evidence between the parties, speaking for myself alone, I should have some doubt whether its effect, on the whole, would not be to do away with the right, which I conceive, the plaintiff has under the original pottah, viz., the right, under the circumstances of the case, to an abatement of rent; because I think there

would be good ground for arguing upon the terms of the ikrar that there was not, relative to this Bil, an unqualified undertaking on the part of the landlord to keep the tenant in due possession and enjoyment thereof. However, the defendant, with full advice I must presume, has, from the beginning, repudiated this ikrar, said that it is not binding upon him, and ought not to be used as evidence between him and the plaintiff. I think, therefore, that excluding that ikrar, as he desires, the case stands, as I have already said it does, that is, the plaintiff has a good right to ask for an abatement of rent from the landlord.

2. At first I had some doubts as to whether abatement for a cause of this kind was a matter which could properly be said to fall within the jurisdiction of the Revenue Courts, but upon reference to several cases which have been decided in this Court, I think it is now too late to say that the Revenue Courts have no jurisdiction to entertain a suit for abatement in all cases where the holding of the tenants has diminished since the time when he received possession from the landlord, whatever may have been the cause of the diminution, and whether it effected an absolute destruction of the subject or not. I have, therefore, come to the conclusion that my views, on this head, were not well founded; and that the Revenue Courts have jurisdiction to entertain suits of this nature. The only question remaining then is, what ought to be the amount of abatement. The Deputy Collector has gone through a most elaborate calculation, in order to arrive at the required result. I feel bound to say that it seems to me that his calculation is misplaced. When once it is determined that a tenant is entitled to an abatement of rent, in consequence of the subject of demise having been diminished, whether by reason of its destruction as in the case of diluvion, or otherwise as has happened in this case, the only thing that requires to be settled is, what was the amount, what was the portion, of the original rent which was referable to the portion of the tenure which has disappeared. It might be, of course, that the original contract specified in terms how much rent was reserved out of the mehal in question. In this instance, however, I understand that there is nothing in the pottah to show that the rent was apportioned in parcels to the different parts of the whole land held in putni. It seems to me, therefore, that the only way to arrive at a conclusion as to how much of the whole rent is fairly attributable to this particular portion, is to deal with it as a matter of proportion only; that is, such a sum ought to be deducted from the whole rent as would bear to that whole rent the same proportion as the annual value of the portion of the land which has disappeared bears to the annual value of the land originally leased. This course does not seem to have been pursued in this case, and I am quite unable to judge whether the course actually pursued has led to any materially different result, or not, as compared with that which this would produce. But I believe, we are relieved from this difficulty by what fell from Baboo Taraknath Sen, the pleader for the special appellant, in the course of his argument in this appeal; for I understood him to admit that no dispute had been raised as to the amount of the actual abatement. That all the questions that were raised in special appeal, had reference

to the jurisdiction of the Court, and to the inadmissibility of the ikrar. This being so, it is not for me, of course, to say, whether the mode of assessing the abatement has produced a result materially different from that which, in strictness, ought to have been arrived at. The party most concerned does not seem to be aggrieved; and, therefore, in my opinion, the appeal ought to be dismissed with costs.

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[1]Cognizance of suits under this Act.

[Cl. 3, Sec. 23:--All complaints of excessive demand of rent, and all claims to abatement of rent * * * * shall be cognizable by the Collectors of land revenue and shall be instituted and tried under the provisions of this Act, and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court or by any other officer or in any other manner. (Addition to be made by Act XIV, 1863, s. 1).]