

(1866) 08 CAL CK 0009

Calcutta High Court

Case No: Special Appeal No. 1005 of 1865

Kali Krishna Haldar and Others

APPELLANT

Vs

Girish Chandra Bose

RESPONDENT

Date of Decision: Aug. 31, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

In this case, which was a suit for enhancement of rent, it appears from the decision of the Zilla Judge that the defendant pleaded that the tenure existed previously to the decennial settlement, and that the rate of rent had been uniform. The lower Court found that the receipts proved that the rent at which the land is held by the ryot had not been changed for a period of twenty years before the commencement of the suit. If this is so, it is to be "presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period" Act X of 1859, s. 4. If that presumption be made, the ryot is entitled to the benefit of the provision of s. 3, Act X of 1859, which enacts that "ryots who hold lands at fixed rates of rent, which have not been changed from the time of the permanent settlement, are entitled to receive pottas at those rates," Then comes the question what would comply with, those words, "unless the contrary be shown, or unless it be proved that such rent was fixed at some later period." If a defendant sets up that he came in under a potta subsequent in date to the time of the permanent settlement, it appears by his own showing that he has not held from the date of the permanent settlement. But if he should say "I hold under a potta prior to the time of the permanent settlement, and I have been paying rent for the last twenty years at an uniform rate," and should prove that he had held at the same rate of rent for a period of twenty years next before the commencement of the suit, the fact of his having stated that he held under a potta would not deprive him of the benefit of the presumption arising from the uniform payment of rent, even if he should fail to prove that his potta was genuine. So, if he were to say "I have held for a period of twenty years at the same rent; I hold a potta of a date subsequent to the permanent settlement, but that

potta was granted to me in confirmation of a prior holding;" that would not rebut the presumption arising from the proof of his having held at a rent which has not been changed for a period of twenty years next before the commencement of the suit. It is only when, by evidence or by his own showing, it appears that his holding commenced or that his rent was fixed at a period subsequent to the date of the permanent settlement, that the presumption created in his favor by s. 4, Act X of 1859, is rebutted. A ryot is not precluded from the benefit of his having held at a fixed rate which has not been changed from the date of the permanent settlement, of any presumptive evidence to that effect, merely from the fact of his stating that he holds under a potta not inconsistent with that presumption, though he may fail to prove the potta.

2. The case must go back to the Division Bench which referred it with this expression of our opinion, in order that they may finally determine it.

¹ See Beng. Act VIII of 1869, s. 4.