

**(1925) 05 CAL CK 0037**

**Calcutta High Court**

**Case No:** None

Matta Majhi

APPELLANT

Vs

Gopi Nath Karmakar and Others

RESPONDENT

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**Date of Decision:** May 12, 1925

**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 105

**Citation:** AIR 1926 Cal 353

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### **Judgement**

1. This appeal arises out of a certain application u/s 105 of the Bengal Tenancy Act to fix a fair and equitable rent of a certain holding.

2. The case of the plaintiff was that in the finally published record of rights the holding in question was recorded in the Khatian No. 45 of Mouza Simulberia No. 53, Thana Chhatna, and that the defendant was recorded as a tenant of the plaintiff and he is liable to pay rent to the plaintiff for the land in question that he has not paid any rent and, therefore, the plaintiff asked the Court to fix a fair and equitable rent.

3. The case of the defendant was that he did not hold the land in question under the plaintiff but he held the land in question under one Shyama Charan Karmakar at a fixed rent of Rs. 5-1. The Assistant Settlement Officer held that the defendant held the land in question under the plaintiff and he fixed a fair and equitable rent at Rs. 23-4-9.

4. The defendant appealed to the District Judge and on appeal he did not contest the fact that he had held the land under the plaintiff, but he seems to have contended that the rent fixed was not a fair and equitable rent for the holding. The learned Judge decided in favour of the plaintiff and the defendant tenant has appealed to this Court.

5. The first ground urged by the learned advocate appearing for the appellant in this appeal is that the rent fixed enhances by more than two annas in the rupee, the

original rent of the tenancy and that this contravened the provisions of Section 29 of the Bengal Tenancy Act. Section 29 of the Bengal Tenancy Act has no application whatever to a proceeding u/s 105. Section 29 refers to contracts between landlords and tenants and deals with oases of money rents of an occupancy raiyat which may be enhanced by contract in writing and registered and which must not exceed by more than two annas in the rupee, the rent previously payable by the raiyat. Obviously, therefore, this section has no application whatever to proceedings u/s 105.

6. The next point urged by the learned advocate is that the finding of the learned Judge that the rent has been fixed on a consideration of the rents paid for similar lands in the neighbourhood is not based on evidence. What the Settlement Officer says in dealing with this point is this:

7. Neither side has adduced any reliable evidence as to the rates of rent obtaining in the neighbourhood for similar lands." Then he goes on to say "from the finally published record of rights the neighbouring rates for similar lands appear to be as follows." Then he gives those rates in his judgment. It seems to me that what the learned Settlement Officer apparently meant was that although the parties had not adduced any oral or documentary evidence on the point, he had before him the evidence of the record of rights as to rents for similar lands in the neighbour" hood. The learned Judge has accepted the finding of the first Court on this point. Therefore, I do not think that it can be said that the finding of the learned Judge is not based on evidence.

8. The last point taken by the learned advocate is that it is not necessary to prove the rent paid by the tenant in order to establish what the existing rent is. I admit I do not appreciate the force of this contention. The section provides that the existing rate of rent shall be presumed to be fair and equitable if the contrary is not proved. Even if the tenant succeeds in proving his existing rent, it is still open to the opposite party the landlord to establish what is a fair and equitable rent. The section says that the rent which is now paid is presumed to be fair and equitable until the contrary has been proved. The learned Judge points out that even assuming that they have been paying at the rate of Rs. 5-1 there would only be a presumption that it is a fair and equitable rate. As far as I can see this was the case of the defendant. As I have already pointed out it was merely a, presumption which has been rebutted by the evidence of the landlord.

9. The result, therefore, is that the appeal fails and must accordingly be dismissed with costs.