Aptabuddi and Others Vs Syed Alla Hafij and Others

Court: Calcutta High Court

Date of Decision: Dec. 19, 1924

Citation: AIR 1925 Cal 1104

Hon'ble Judges: Suhrawardy, J; Cuming, J

Bench: Full Bench

Judgement

Suhrawardy, J.
These eight appeals arise out of applications by the plaintiffs landlords u/s 105, Bengal Tenancy Act, for settlement of fair

and equitable rent on two grounds: first, additional rent in respect of additional area in possession of the defendants; and secondly, rise in the price

of staple food crops. As to the second ground both the Courts below have agreed in allowing small enhancement on the ground of rise in the food

crops. With regard to the first ground they are in disagreement in respect of the question relating to the length of the nal or standard rod, which was

employed at the time of the original letting. The landlord''s case was that the nal prevailing in the pargana was one of 15 or 16 cubits, whereas the

defendants assented that its was one of 18 or 20 cubits. The Revenue Officer accepted the defendant''s version and decided the suits according to

that standard of measurement. One of the grounds which the learned Revenue Officer gives in support of his judgment is that if the khatians are

measured according to the standard alleged by the defendants in Parganahs Kasipur and Kasimnagar, in 201 cases gujasta area approaches the

area converted by the rod of 20 cubits as contended by the defendants and only in 26 cases it approaches the area converted with the rod of 16

cubits as alleged by the plaintiffs. In Parganas Khijirpore and Rasulpur the present area, if measured by a rod of 18 cubits as alleged by the

defendants, in 29 cases it approaches the gujasta area, and if measured by a rod of 16 cubits, as alleged by the plaintiffs, in 16 oases it approaches

the gujasta area. In 5 oases the gujasta areas exactly tally with the area found by conversion with a rod alleged by the defendants. The learned

Revenue Officer then goes on to say that in the majority of oases the difference between the areas of the landlords sherista and the area found by

the application of the standard alleged by the defendants is very small and the difference may be ascribed to be due to closeness and accuracy of

the present survey. In support of defendants'' version of the case the Revenue Officer relied upon certain kobalas, which ware executed by the

tenants in which the length of the nal is mentioned as alleged by the defendants tenants. There was an appeal by the landlords and the learned

Special Judge accepted the standard of measurement as alleged by the plaintiffs. In coming to the conclusion he has discarded as absolutely

worthless the kobalas between the tenants to which the landlords were no parties. The learned Judge has, however, given effect to the kabuliyabs,

which were executed by some of the tenants in favour of the landlords to which some of the appellants were no parties; and he finds that as the

plaintiff''s chittas are corroborated by the admissions in the kabullyats there is no doubt that the plaintiffs'' contention with regard to the length of the

nal is correct. In order to explain away the increase of areas on a comparison of the gujasta areas and the areas now ascertained by measure

according to the standard alleged by the landlords the learned Judge observes as follows: ""It is clear from the evidence that there were jungly

areas in the past, which have now been brought under cultivation and this is the explanation of the increase."" We may mention here that the

increase in almost all cases is more than 50 per cent. and in some oases more than double the gujasta area.

2. With regard to the oral evidence as to the standard of the nal the learned Judge observes that the defendants'' evidence is purely hearsay; but he

has no observation to make with respect to the oral evidence adduced by the plaintiffs. The finding of the lower appellate court is that as the

plaintiffs'' chittas are corroborated by admissions in the kabuliyats, and as there has been some encroachment by the tenants upon the jungle lands

of the plaintiffs, there has been this difference between the gujasta area and the present area. It does not appear from the judgment of the learned

Judge, why he has preferred the kabuliyats produced by the plaintiffs to the kobalas on which, the defendants relied. Both stand on the same

footing If one piece of evidence has to ho discarded on the ground, that it is not effective against persons, who are not parties to it, the same

consideration also arises in the case of the other. Considering the circumstances under which these documents came into existence, namely, that

there was a difference between the landlords and the tenants with regard to the length of the nal and each party was trying to create evidence be

prove its case by means of statements in documents behind the back of the other party, it is desirable that both the documents should either be

received or ignored. In our judgment the proper course would be to consider both the documents as worthless on the ground assigned by the

Special Judge.

3. Then there remains on the side of the plaintiff the chittas. They are the zamindar''s private survey papers. In the body of the chittas there is no

mention of the length of the nal on which measurements were made, but on the top there is inserted a remark that the measurement has been made

with a nal of 20 cubits. The appellants argue that these chittas are not admissible and have relied on the case of Ram Chunder Rao v. Bunseedhur

Naik [1883] 9 Cal. 741. That case, however, is not in point as there the chittas had been admitted as evidence u/s 35 of the Evidence Act, as

public documents having been prepared by the Government in respect of its khas mehal. Sir Richard Garth held that the position of the

Government in respect of khas mehals being that of a private zamindar maps and papers of the zemindar should not be admitted in evidence as

public documents. There are other dicta of Sir Richard Garth in some oases in reference to chittas, but they proceeded on the ground that they

were not public documents and should not be treated as such. Recently there have been some numerous oases in which chittas have been admitted

in evidence for what they are worth u/s 13 of the Evidence Act though they were prepared by the zamindar in the absence of the tenants. It is

difficult for us to say that the chittas are totally inadmissible; but according to the circumstances of each particular case there may be a great deal of

difference in their probative value, which may range from zero be hundred. But this is a matter which is within the legitimise jurisdiction of the Court

of fact to determine. In this case the learned Special Judge relied upon the chittas having been corroborated by the kabuliyats. But, as we have

held that the kabuliyats are valueles, it now remains with the learned Judge to determine whether there is sufficient evidence on the record to give

effect to the plaintiffs'' contention.

4. As to the explanation given by the learned Judge for increase in area by the tenants bringing under cultivation the jungle lands of the landlords, it

is argued by the appellant that no such issue was framed before the Revenue Officer nor was evidence directed towards this point by the parties.

There may have been some tray statements made by the witnesses in their evidence to which no effect was given by the Court of first instance.

They, therefore, pray that if an enquiry is to be made into that question they should be afforded proper opportunity to adduce evidence on this

point As we are ending the case back to the lower appellate Court, we leave it to the discretion of that Court to determine whether an enquiry

should be made on this point and whether the appellants should be given an opportunity of adducing evidence to meet any case that the plaintiffs

may choose to make on the ground.

5. In the result we allow the appeals, set aside the decrees of the lower appellate Court and remit the cases to that Court for a re-hearing of the

appeals in light of the observations we have made above. If the learned Judge thinks, that the defendants should be allowed opportunity to adduce

further evidence on the point of increase of area, he would either himself receive such evidence or send the case back to the first Court. The

plaintiffs will also be at liberty to adduce evidence on this point. It must be evident that this order of remand relates only to the khatians, which are

involved in these appeals and which are specified in the appendices to the petitions filed by the appellants to-day. The costs of these appeals will

abide the result. We assess the hearing fee at one gold mohur in each case.

Cuming, J.

6. I agree.