

(1919) 02 CAL CK 0033

Calcutta High Court

Case No: None

Shaikh Pokan and
Others

APPELLANT

Vs

Rajani Kamal
Chakravarty and
Another

RESPONDENT

Date of Decision: Feb. 17, 1919

Citation: 50 Ind. Cas. 285

Hon'ble Judges: Newbould, J; N.R. Chatterjee, J

Bench: Division Bench

Judgement

1. The petitioners in these Rules were defendants in certain suits instituted by the opposite parties for recovery of certain sums of money under agreements executed by the petitioners in their favour. The main defence to the suits was, first, that the Small Cause Court had no jurisdiction to try the suits, and, secondly, that the order of the Revenue Officer in certain commutation proceedings was binding on the plaintiffs in suits in the Small Cause Court. These objections were overruled by the Small Cause Court. The petitioners thereupon obtained these Rules.

2. The first question for consideration is, whether the Small Cause Court had jurisdiction to try the suits.

3. The suits, as we have already said, were based upon certain agreements. The agreements in these cases are all similar in their nature, and we refer to one of them. The kabuliyat is described as one for agricultural labour for cultivating in partnership the khas khamar land (khas khamar jamir bhage chas abad kara krishi majuri girir kabuliyat patra midang). The land is described as having been kept separate for a very long time on account of subsistence (jibika) of the Maliks.

4. The kabuliyat then goes on to say: "I having prayed for cultivating the same in partnership (bhage) you have granted my prayer.... I shall always grow paddy on the

land. Every year before growing crops, I shall ask you what kind of paddy shall have to be grown on which land, and shall grow paddy according to your desire. I shall not be able to grow any paddy or crops according to my own will. When in due course the paddy would be ripe, I shall out it and take it to your house for threshing." After stating that the executant would deliver a certain quantity of paddy to the owner, he says: "I shall get the remaining paddy and hay as remuneration for my cultivation, seeds, looking after and labour, instead of money in cash."

5. The terms of the document show that it was not a settlement of the land with a tenant. The expression agricultural labour could not have been used in connection with a rayati settlement. The fact that the owner of the land would have the choice of a particular kind of paddy to be grown on the land clearly shows that the executant of the agreement had no interest in, or control over the land, and lastly, the clear stipulation that he would get the remaining paddy as his remuneration instead of money in cash shows the real nature of the instrument.

6. We are clearly of opinion that the contract was not one of letting out land by a landlord to a tenant and that the suit based upon such a document is triable by the Small Cause Court.

7. The next question for consideration is whether the order of the Revenue Officer in the commutation proceedings is binding upon the Small Cause Court.

8. It appears that in the course of settlement proceedings these defendants were recorded as settled raiyats of the village and that the Revenue Officer in the commutation proceedings, proceeding upon the said Record of Rights, made an order for commutation of rent. u/s 40 of the Bengal Tenancy Act, commutation of rent can only take place in the case of an occupancy raiyat. Here, the Revenue Officer proceeded upon the settlement record which described the defendants as occupancy raiyats and no doubt if they were occupancy raiyats, the order of the Revenue Officer commuting the rent would be binding.

9. We have, however, found that the defendants, far from being occupancy raiyats, are not tenants at all. That is also the finding of the Small Cause Court Judge. That being so, the order of the Revenue Officer in the commutation proceeding cannot be binding upon the Small Cause Court.

10. As was pointed out by Mookerjee, J., in *Kali Krishna Biswas v. Ram Chandra Baidya* 29 Ind. Cas. 896 : 21 C.L.J. 487 : 19 C.W.N. 823, when the essential foundation for the exercise of jurisdiction u/s 40 of the Bengal Tenancy Act, namely, that the tenant whose rent was sought to be commuted was an occupancy raiyat, is proved to be non-existent, the order made by the Revenue Court for commutation is without jurisdiction and is not conclusive between the parties in the Civil Court. This case was followed in the case of *Durga Mohan Gangopadhyaya v. Sukumar Das* 30 Ind. Cas. 412 : 21 C.L.J. 590 : 19 C.W.N. 825.

11. It is contended on behalf of the petitioner that the Revenue Officer proceeded upon the settlement record, that an entry, in the Record of Rights raises a presumption u/s 103(6) of the Bengal Tenancy Act as to its correctness, and that although it may be open to an ordinary Civil Court to go into the question as to its correctness, a Small Cause Court has got no such powers.

12. The petitioner, no doubt, had the entry in the Record of Rights in his favour and he accordingly started with a presumption in his favour, but it was not necessary to have that entry set aside or to directly decide the question of status. It was open to the plaintiff to show the in-correctness of the entry and thereby rebut the presumption raised by it, because the presumption afforded by the entry u/s 103 is a rebuttable one. That being so, the Small Cause Court was quite competent to go into the question.

13. It is true that the learned Small Cause Court Judge does not expressly refer to the presumption arising from the entry in the Record of Rights in his judgment. But the fact that there was such an entry was present to the mind of the learned Judge as he referred to the order in the commutation proceeding which mentions the entry. Were it not that the agreement on which the suit is based was so clear, it might have been necessary to remand the case to the lower Court. The document, however, clearly shows that no tenancy of any kind was created under it. That being so, we think it unnecessary to remand the case, seeing that the order of the Revenue Officer in the commutation proceeding was based on the mere fact that the document was described as a kabuliyat and not as an agreement.

14. The Rules are accordingly discharged with costs Rs. 35 (Rupees thirty-five) to be equally divided among the seven cases.