K.S. Bonnerji Vs Mahamed Foiz and Others

Court: Calcutta High Court

Date of Decision: Dec. 7, 1925

Acts Referred: Bengal Tenancy Act, 1885 â€" Section 105, 50(2)

Citation: 96 Ind. Cas. 884

Hon'ble Judges: Panton, J; Ewart Greaves, J

Bench: Division Bench

Judgement

Ewart Greaves, J.
Appeals Nos. 1760, 1769, 1776 and 1778 of 1923 have abated and are dismissed with costs.

2. The other appeals arise out of proceedings u/s 105 of the Bengal Tenancy Act and the landlord is the appellant. The appeals are directed

against a decision of the Special Judge of Tipperah which eon-firms a decision of the Assistant Settlement Officer of the same place.

3. Three points have been urged in these appeals. The first is that certain old papers of 1795, 1798 and 1800 which are Exs. Nos. 12 and 13, the

originals of which were produced from the Tipperah Collectorate and which are said to show variations of rent in respect of the premises in suit,

have not been given sufficient weight in the decisions of the Courts below. These papers are to few melani papers, and jama wasil bald papers.

They were filed, it appears, under Regulation XLVIII of 1793 and they were filed in the Collectorate in 1795. It is urged that if proper attention is

paid to these papers the variation of rent is established with regard to the tenancies in question and that, accordingly, there is no presumption in

favour of the tenants under the provisions of Section 50 Sub-section (2) of the Bengal Tenancy Act. So far as this point is concerned both the

Courts below have taken these papers into account and considered them for the purposes of the appeals. What the learned Judge, in the Court

below says with regard to them in his judgment is that even, if they are accepted as accurately stating the variation at the time they were filed they

cannot be regarded as a complete Record of Rights and as binding on the tenants so as to rebut the presumption in their favour created by the

recent Record of Rights. The learned Judge further states that if they are accepted, a number of deductions and inference will have to be drawn

which would not be just in the interest of the tenants to draw. We have before us a statement showing, so far as these appeals are concerned, the

alleged variation of rent in respect of the different taluqs to which the tenancies relate and certainly it would appear from the perusal of the materials

before us that the papers, show variation in rent so far as the taluqs in question are concerned. But in view of the fact that both the Courts below

have taken them into consideration and held that they cannot be relied on to rebut the presumption raised in the tenants favour by the recent

record, we do not think that there is any reason why we should put a different value upon them from what has been put by the Courts below, and I

am not prepared to say that the learned Judge has fallen into any error in law in dealing with these documents. Accordingly we do not see any

reason why we should not accept the evidentiary value which he has placed on them and to hold that so far as this point is concerned no valid

ground for upsetting the judgment of the Special Judge has been made out.

4. We now come to the second point. This point relates only to Appeals Nos. 1777, 1771, 1772, 1783, 1798, 1801 and 1805. What is urged

before: us is that with regard to the tenancies which are covered by these appeals there are no dakhilas whatsoever which support the tenants''

contention of uniform rate of rent in respect of the tenancies in question, It is stated that if there were even two or three dakhilas produced by the

tenants to show payment of rent at uniform rate, the learned Judge would be quite justified in supporting, the entry in the Record of Rights but

where, as in these appeals, no rent receipts have been produced the learned Judge should have held that there is nothing to support the entry in the

Record of Rights with regard to the fixity of rent in respect of these tenancies. It is stated generally that these rent appeals have been dealt with in a

lump and that where no dakhilas exist the tenants have not established a uniform rate of rent. It seems to me that this argument is founded on a

fallacy. The Record of Rights records the tenants of these tenancies as holding at fixed rates. It may require very slender evidence to rebut the

presumption raised by that record but so long as the entry remains unrebutted it seems to me that there is no onus on the tenants to produce

evidence of a uniform rate of rent. Upon what evidence the entry is based, we do not know but until that entry, is displaced by the landlord the

tenant is entitled to rely on it and it seems to me at he is not bound to produce any evidence in support of the fixity of rent so long as the entry itself

remains unrebutted. It is stated that the entry has been rebutted by reason of the, tahut mdani papers and jama wasil bald papers to which we have

just referred. It is not necessary to repeat what we have already stated with regard to these papers but I am unable to agree with the contention

that there is any onus on the tenants until the entry is displaced by some evidence tendered on behalf of the landlords.

5. The next point concerns Appeals Nos. 1758, 1772, 1771, 1773, 1775, 1777, 1779,1780, 1781, 1783,1798, 1801, 1804, 1805 and 1809. It

is stated that in these cases the present tenancies are the result of the splitting up of the original tenures which were created and, it is, therefore,

stated that no presumption arises with regard to these tenancies because they are not original tenancies owing to the fact of their having been split

up at some date which is unknown and we were referred to two cases reported as Uday Chandra Karji v. Maharaja Nripendra Narayan Bhup 1

Ind. Cas. 4 : 36 C. 287 : 13 C.W.N. 410 and Krishna Kamini Dasi and Another Vs. Nil Madhab Saha and Others, which are cited to show there

is a conflict of authorities and we were invited to accept the authority of the first case and to refer the matter to a Full Bench for the decision of the

question of law stated to arise by reason of the conflict of decisions in those two cases. We, however, see no reason to do this. There is no doubt

as stated in the last case that some presumption would arise if the proportionate rent fixed for the different holdings was the same as that of the

original tenures out of which they were created and here again it seems to me that the tenants are entitled to rely on the entry in the record and are

not bound to adduce evidence of uniform rate of rent until the landlord has displaced the presumption raised by the entry in the record. This being

so, I think that it is impossible for us to say that there has been any error of law with regard to these tenures which have been split up from time to

time and to say, as we were asked to say, that no presumption arises by reason of the provisions of Section 50.

6. I think, therefore, that for the reasons I have indicated the decision of the learned Special Judge is correct and these appeals fail and are

dismissed with costs--hearing-fee, five gold mohurs for all the appeals.

Pantora, J.

7. I agree.