Chundy Churn Law Vs Balaram Gope and Others

Court: Calcutta High Court

Date of Decision: July 9, 1925

Citation: 91 Ind. Cas. 763

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

Bench: Division Bench

Judgement

Chakravarti, J.
This is an appeal by the plaintiff--the landlord--against a judgment of the Special Judge of Tipperah, dated the 21st of

March 1922. This appeal arises out of an application, made by the landlord u/s 105 of the Bengal Tenancy Act for a settlement of fair and

equitable rent and also for additional rent for additional area held by the raiyats. The Only question which is now before us relates to the question

as to additional rent for additional area claimed by the plaintiff.

2. It appears that the tenants, the defendants, held under a written and registered kabuliyat. The kabuliyat mentions the area for which the rent was

fixed. The landlord after the Record of Rights had been prepared contended that the area now found was more than the area for which the

defendants--the raiyats--were paying rent. The defence of the defendants was a total denial of the fact that the kabuliyat was executed after any

measurement at all. They further contended that the standard of measurement adopted at the time of the initial measurement was not the standard

of measurement which the plaintiff claimed but that the standard was different. No question it appears was raised that the area stated in the

kabuliyat was inaccurate. The defendants did not raise the question that the area stated in the kabuliyat was arrived at by a measurement which

was inaccurate. The Settlement Officer found that there was additional area. In calculating the additional area the Settlement Officer made a

deduction from the area of 10 per cent.

3. On appeal the plaintiff challenged the finding of the Settlement Officer as to the deduction of 10 per cent. The lower Appellate Court in

disposing of that contention stated as follows: ""His next contention is that a 10 per cent, allowance for closeness of survey should not have been

made in calculating the excess land where additional rent was allowed, firstly because that is not in the contract, secondly because the statement of

area in the kabuliyat should be taken as an admission and conclusive against the tenant. There is force in these arguments but I cannot myself see

why in interpreting the measurements, of the present settlement to discover excess area, the empiric rule laid down by the survey people

themselves should not be followed. I accordingly agree herein with the lower Court.

4. Now, as I have already stated, the present appeal is by the plaintiff and the learned Advocate for the appellant has contended that the lower

Appellate Court was wrong in allowing a 10 per cent. deduction simply on a certain empiric rule laid down by the Survey Officers. The question as

to whether there should be a deduction from the ascertained area or not as allowed here was raised in a case reported as Lakhi Narain Sarongi v.

Sri Ram Chandra Bhunyal 11 Ind. Cas. 212 : 15 C.W.N. 921 : 14 C.L.J. 146 and their Lordships in deciding that question said as follows: ""Here

however, as we have already stated, it is specifically known that the area was ascertained by scientific methods, consequently the only inference

which could be legitimately drawn was that the lands measured and described as lying within certain boundaries were let out to the tenants"" Then,

later on, their Lordships said: ""On behalf of the landlord-respondent two cross-objections have been urged. It has been contended in the first place

that u/s 52 the landlord is entitled to additional rent for all lands proved by measurement to be in excess of the area for which rent has been

previously paid by the tenant and that consequently the Courts below were not entitled to allow a reduction of 10 per cent, from the area as

ascertained by measurement. Prima facie this contention appears to be well founded, but upon a closer examination it turns out to be unsubstantial.

The Special Judge has held in effect that although on a previous occasion the lands were measured the measurement was not absolutely accurate

and he has practically made a deduction of 10 per cent, to allow for possible errors in the measurement."" In the present case the area was stated in

the kabuliyat executed by the tenants. Prima facie that statement, would be accepted as correct unless it was challenged by the defendants as

incorrect. In the present case no such plea has been taken by the defendants. The rule as was indicated in the case to which I have referred was

also adopted in Baidya Nath Dutt v. Jawahir Mandal 23 Ind. Cas. 794 decided on 20th March 1914 by Mr. Justice Coxe and Mr. Justice Imam.

It appears to us that there is no reason to allow any deduction from a scientific measurement or any other measurement unless it is shown that

either of those two measurements was inaccurate. Ordinarily the measurements made by Settlement Officers are accepted as scientifically made

and correct but the measurements made by the landlord are not so scientifically made and it may be that such measurements may be challenged,

but unless such measurements are challenged as inaccurate prima facie they ought to be accepted as correct. When any such plea is taken and the

Court finds from the circumstances, as was found in the case of Lakhi Narain Sarongi v. Sri Ram Chandra Bhunyal 11 Ind. Cas. 212 : 15 C.W.N.

921 : 14 C.L.J. 146, to which I have just referred, that there are reasons to believe that the previous measurement was inaccurate, in such a case

the Court ought, upon the circumstances and evidence in each case, to find whether the previous measurement was or was not accurate. If it is

found to be inaccurate then the Court would make certain deductions as would, in the circumstances of that case, give an approximate and

accurate result. But, in the absence of any case that the previous measurement was inaccurate, I do not see on what principle of law a deduction of

10 per cent, can be made. In the present case, as I have already stated, the previous measurement was not challenged as inaccurate. That being

so, I do not find any reason given by the learned Special Judge upon which the landlord is not entitled to claim rent for the difference between the

area which was stated in the kabuliyat and the area now found by the Settlement Officer. In this view. I think, that the decree of the learned Special

Judge ought to be varied by allowing the plaintiff to get rent for the whole of the area without any deduction of 10 per cent. Therefore, the plaintiff

would be entitled to additional rent for the area shown to be in excess without any deduction of 10 per cent.

5. The result, therefore, is that the decree of the lower Appellate Court is modified as stated above. The appellant is entitled to his costs in this

Court; hearing fee one gold mohur.

6. This decision governs Appeals Nos. 2003, 2004 and 2005 of 1922. The hearing fee is assessed at one gold mohur in each case.

Cuming, J.

7. I agree

8. We are informed that the sole respondent in Second Appeal No. 2004 of 1922 which was disposed of by us on the 19th May 1925 died more

than three months before the disposal of the appeal. Our judgment of the 19th May 1925 is, therefore, of no effect as regards this appeal which

has abated.