

(1920) 05 CAL CK 0042

Calcutta High Court

Case No: None

Golak Bihari Bhowmik by his
Father and Next friend Benode
Behari Bhowmik

APPELLANT

Vs

Hon'ble Maharaja Manindra
Chandra Nandi Bahadur

RESPONDENT

Date of Decision: May 17, 1920

Citation: 60 Ind. Cas. 86

Hon'ble Judges: Panton, J; N.R. Chatterjea, J

Bench: Division Bench

Judgement

1. These cases were remanded to the lower Appellate Court and that Court was directed to decide the question whether the stipulation in the kabuliyat to pay the full rent after the expiry of the lease was intended to be acted upon, or whether there was a waiver of the stipulation after the expiry of the lease.
2. That question has been gone into by the lower Appellate Court and it has come to the finding that it was intended to be acted upon.
3. It is contended before us on behalf of the defendant-appellant that the learned District Judge in arriving at that finding has proceeded upon the view that the realisation of rents at the reduced rate for a long period of time cannot by itself show that the landlord at the time he accepted the kabuliyats never intended to enforce his right to receive rent at the full rate after the expiration of the term of the lease. This, the learned Pleader for the appellant says, indicates that, in the opinion of the learned Judge, it was not independent evidence on the question of intention. But just in the previous passage, the learned Judge says: "The fact that there had been no realisation or attempt at realization of the full rent was undoubtedly a piece of evidence having considerable bearing upon the question whether or not the stipulations in the kabuliyat were from the first intended to be acted upon."

4. It appears, therefore, that what he meant to say was that the fact of receipt of rent at the reduced rate for such a long time was not conclusive. He has referred to certain facts and circumstances, and came to the conclusion that these facts and circumstances, either individually or collectively, do not establish the proposition that the plaintiff when he accepted the kabuliyats never intended to enforce his rights to realise the full rents as reserved in these documents after the expiry of their term." The learned Judge, further, goes on to find as follows: "On the other hand, there are in these cases; more than one circumstance to indicate that the plaintiff, when he accepted the kabuliyats had the full intention to enforce his rights to realise full rents when the term of the kabuliyat would be over." He concludes thus: "On a careful consideration of the facts and circumstances of the case as I have detailed them above, I have no hesitation in holding that the defendant failed to show that the stipulations in the kabuliyats had not been meant to be acted upon, and my finding is that thus stipulations were intended to be acted upon at the time the kabuliyats were executed by the defendant's predecessors and accepted by the predecessors of the plaintiff."

5. These findings are conclusive in second appeal and we are unable to interfere with them.

6. The next contention raised is that the learned District Judge was wrong in not allowing the appellant's Pleader in the lower Appellate Court any opportunity to refer to certain jama wasil baki papers. It is said that these papers were taken away by the plaintiff and were in Appellate Court when the appellant's Pleader had nearly finished his argument and that, at the time of argument on his behalf, he had not the opportunity to refer to the papers.

7. The learned District Judge, however, points out that the jama wasil baki papers in question had been filed long before the arguments were finished, and that the Pleader for the appellant made no mention of those papers although he had been allowed to advance some additional arguments in the midst of the address of the Vakil for the respondent. We think, that, in the first place, the appellant's Pleader ought to have asked the respondent to produce these papers before the hearing commenced, if anything really turned on those papers, and, secondly, from what the learned Judge says, these papers were on the record before the arguments were concluded. In these circumstances, we do not think that there was any irregularity in the procedure of the Court which would vitiate the judgment.

8. The appeals fail and are dismissed with one set of costs.