(1914) 01 CAL CK 0025

Calcutta High Court

Case No: None

Bata Mandal and Another		APPELLANT
	Vs	
Maharaja Manindra Chandra Nandi Bahadur		RESPONDENT

Date of Decision: Jan. 12, 1914

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 109B, 29

Citation: AIR 1915 Cal 211 : 25 Ind. Cas. 829

Hon'ble Judges: Beachcroft, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. This is an appeal by the defendants in a suit u/s 106 of the Bengal Tenancy Act. In the course of proceedings for the preparation of a Record of Rights under Chapter X of the Bengal Tenancy Act, a dispute arose between the landlord and the tenants as to the amount of rent annually payable by the latter. The landlord relied upon a kabulyat executed by the tenants on the 17th April 1893. The kabulyat on the face of it states that the tenants held a definite quantity of land and that they agreed to pay a specified rent in respect of the land. The tenants contended that the kabulyat had been executed in contravention of the provisions of Section 29 of the Bengal Tenancy Act. To meet this objection, the landlord relied upon an amanat roha, in which it was stated by the tenants that there was no certainty of the actual quantity of land and the amount of rent payable in respect thereof at the time when they executed the kabulyat. The Settlement Officer held that the kabulyat was not binding upon the tenants and made an entry in the Record of Rights in their favour, holding that the rent payable by them was the rent they had paid before the kabulyat was executed. The landlord thereupon instituted the present suit for declaration that the tenants were liable to pay rent on the basis of the kabulyat and for amendment of the Record of Rights. The Settlement Officer dismissed the suit; but upon appeal that decision has been reversed by the Special Judge. In this. Court

oh behalf of the tenants it has been, argued that the kabulyat is not binding upon them, and an endeavour has been made to distinguish the decision in Sheo Sahoy v. Ram Rachia, Boy 18 C. 333 and Nath Singh v. Damn Singh 28 C. 90. The Special Judge has found that at the time when the kabulyat was executed, there was a bona fide dispute between the landlord and the tenants as to the quantity of land and the rent payable in respect thereof. On the basis of this finding, he has held that the kabulyat is not affected by the provisions of Section 29 of the Bengal Tenancy Act. In our opinion, the view taken by the second Judge is supported by the decisions mentioned and must be upheld.

2. There is no room for controversy that the case of Nath Singh v. Damri Singh 28 C. 90 is an authority for the proposition that an agreement embodied in a kabulyat to pay a certain amount of rent agreed upon by the parties in settlement of a bona fide dispute regarding the rate of rent and to avoid further litigation, is not an agreement in violation of the terms of Section 29 of the Bengal Tenancy Act. A careful examination of the judgments of the learned Judges who decided that case, has convinced us that this was the proposition they intended to lay down on the authority of the decision in Sheo Sahoy v. Ram Rachya Roy 18 C. 333 With regard to this earlier case, there may be some room for argument that the judgments are possibly ambiguous; there may be a question whether the learned Judges intended to lay down that Section 29 applied only when the intention of both parties was to effect an enhancement. But it is worthy of note that one of the learned Judges who decided the later case was a party to the earlier decision and we must accept his view of what he had intend-ed to decide in concurrence with his colleague in the earlier case. We must take it then that the two decisions mentioned are against the contention of the appellant. There i s the further fact that in the case of Kedar Nath Hazra v. Maharaja Manindra Chandra Nandi 5 Ind. Cas. 309 : 11 C.L.J. 106 to which one member of this Bench was a party, an unsuccessful attempt was made to challenge these two decisions, and although some doubt was expressed whether they gave effect to the true intent of the Legislature in framing Section 29, they were followed, possibly not altogether without hesitation and reluctance. After a careful consideration of the elaborate arguments which have been addressed to us on the present occasion, we see no adequate reason to dissent from these decisions which have been accepted as good law for a quarter of a century: as will presently be seen, they can be defended upon an intelligible construction of Section 29 of the Bengal Tenancy Act.

3. Section 29 finds a place in the fifth Chapter of the Bengal Tenancy Act among a group of sections which deal with the question of enhancement of rent of an occupancy raiyat. Of these the first, namely Section 27, lays down the principle that the rent for the time being payable by an occupancy raiyat shall be presumed to be fair and equitable until the contrary is proved. Section 28 then follows with the principle that where an occupancy raiyat pays his rent in money, his rent shall not be enhanced except as provided by the Act. This clearly contemplates an

enhancement where there is an intention to effect an enhancement. Section 30 deals with the case of enhancement of rent by suit. It is obvious that an enhancement under this section can be effected only when there is an intention to effect an enhancement. Section 29 which is wedged in between Section 28 and Section 30 relates to enhancement of rent by contract, and lays down that the money-rent of an occupancy raiyat may be enhanced by contract, subject to the condition that the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat. The section consequently deals with the validity of a contract for enhancement of rent. It may be legitimately held that there can be no contract for enhancement of rent unless both the parties to the contract are agreed upon one point, namely that there is to be an enhancement of the rent. This does not necessarily imply that the parties are agreed as to what is the amount of rent actually payable before the enhancement. To take a concrete illustration the landlord may assert that the rent payable is Rs. 10; the tenant may assert that the rent payable is Rs. 9. If there is an agreement that the rent in future will be Rs. 11 there is an agreement for enhancement, because both the parties are agreed that the rent payable in future shall be higher than the rent payable in the past, whether we accept the figure for the antecedent rent as asserted by the landlord or as alleged by the tenant. It is thus clear that the operation of Section 29 may fairly be limited to a case where there is a real contract for enhancement, which cannot ordinarily take place where there is a bona, fide dispute, that is, a serious claim, honestly made on the one hand and honestly repudiated on the other, as to the rent payable. Such a dispute may be the result of a controversy as to the area of. the land, or the rate at which it is held or both these elements. This, we think, is a reasonable construction of Section 29 of the Bengal Tenancy Act, and as it has been uniformly adopted ever since 1891 we are not prepared at this distance of time to take a different view. We cannot also overlook the significant fact that although since 1891 the Bengal Tenancy Act has been repeatedly amended, Section 29 has not been so altered as to negative the decisions mentioned. We must accordingly uphold the decision of the Special Judge that the kabulyat in this case is not invalidated by Section 29 of the Bengal Tenancy Act.

4. One further question must be examined, namely, what is the effect of Section 109B, which was inserted in the Bengal Tenancy Act by Act I of 1907 B. C. and did not consequently require consideration in the decisions mentioned? Section 109B deals with the question of the authority of the Revenue Officer to give effect to agreements or compromises. Sub-section (1) provides that in framing a Record of Rights and in deciding disputes under Chapter X, the Revenue Officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant, but he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under the Act. This sub-section clearly contemplates in the first place a dispute, and in the second place a lawful agreement or compromise in settlement of such dispute.

When an agreement or compromise has been reached under these circumstances, the Settlement Officer may give effect to it, but he is debarred from giving effect to it if it is of a certain description. Sub-section (2) then provides that where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Revenue Officer-shall in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner or to an extent not allowed by Section 29 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose. This inquiry is obviously contemplated in a case where the agreement or compromise has been made for the purpose of settling a dispute, namely, a dispute which the Revenue Officer would be called upon to decide on the merits but for the agreement or compromise. Section 109B clearly does not apply to a case of the description now before us, where the contract between the parties was made in 1893, that is 15 years before the Settlement proceedings. Consequently Section 109B is of no avail to the defendants.

5. The result is that the decree of the Special Judge is affirmed and this appeal dismissed with costs. We assess the hearing fee at one gold mohar.

6. It is conceded that this judgment will govern the other appeals, namely, Nos. 370, 559, 565, 581, 590, 597, 602, 603 and 657 of 1910. These appeals, also are dismissed with costs, one gold mohur in each case