

(1922) 08 CAL CK 0045

Calcutta High Court

Case No: S.A. No. 1701 of 1919

Raj Mohan Podder and others

APPELLANT

Vs

Taraprosanna and others

RESPONDENT

Date of Decision: Aug. 28, 1922

Final Decision: Dismissed

Judgement

1. The suits in which this appeal is taken is a suit for rent. The plaintiff, the respondent before us, is the owner or lessee of a taluk described as an abadikaritaluk within an estate known as Mouzah, No. 5237 on the revenue roll of the district of Backergunj, of which apparently the Government is the proprietor. The taluk appears to be bounded on the south by the Bay of Bengal and there had been large gains of land from the sea. In order to settle the rent or revenue payable to the Government on the expiry of an existing period of settlement, proceedings were taken for the preparation of a record-of-rights which was finally published on the 26th September, 1911. The rent or revenue payable by the plaintiff to the Government was increased from Rs. 4,500 to 59,000.

2. The defendants, the appellants before us, are the holders, to the extent of a separated one-fourth share, of a howla or tenure under the plaintiff. The new settlement purported to increase the rent payable by them to the plaintiff from Rs. 569-6-0 to Rs. 986-8-0.

3. Now, it seems unnecessary for the purposes of the present case to determine with precision the relationship between the Government and the plaintiff. I will assume that the plaintiff is one of several tenants of the said estate holding directly under the Government. The question of the competency of the Government to direct a survey of the estate and the preparation of a record-of rights in respect of it under Part II of Chapter X of the Bengal Tenancy Act may have been mentioned in the defendants written statement but no real attempt has been made either in the Courts below or before us to defend the suit on this ground. On the materials available, there appears to be little or no doubt that the question should be

answered in the affirmative.

4. It is true that subsequent to the final publication of the record-of-rights, the plaintiffs brought a suit against the Government in which, it is stated, he asked for a declaration that the settlement proceedings were held without jurisdiction. ****In the end the suit itself was compromised, the plaintiff agreeing to surrender a large area of the land on which the rent was assessed to the Government and to pay a rent of Rs. 4,000 a year for the remainder in which the defendants howla is included. It was said at the bar that Rs. 4,000 represents about 2 annas per bigha of the area retained but there are no materials before us on which the calculation can be even approximately verified.

5. The true question for decision arises in this way. The plaintiff is claiming in this suit, which was instituted on the 24th April, 1917, arrears of rent at the new rate of Rs. 986 a year for the years 1320-1323 (1913-1916 inclusive). The defendants say that the plaintiff is only entitled to rent at the old rate of Rs. 569 a year, that being the rent payable under a lease of the year 1280 (1874) executed by the plaintiff or his predecessor in favour of the defendants or their predecessor.

6. We have, therefore, to turn in the first place to the lease. Under that document the rent reserved is a progressive rent, assessed at the rate of 10 annas 2 pies per bigha on increasing areas. The initial rent was payable for the period 1281-1290. The provisions which follow have been thus translated by the Court's translators:-

From the years 1291 to 1300 B.S. you shall pay along with the jama mentioned above, jama with costs at the said rate in respect of 400 bigtias out of the said patit land, and from the ears 1301 to 1312 B.S., you shall pay jama at the said rate in respect of the additional land, that is to say, you shall pay jama at the said rate in respect of 450 bighas of land; and from the years 1311 to 1313 B.S., you shall pay jama at the said rate in respect of 550 bighas of land over and above that. You shall abide by such rules as may be enforced in respect of the remaining 264 bighas 17 cottas of land, the jamma whereof remains remitted, after the same has been surveyed or brought under cultivation by the Sarkar. Moreover, if, in the meanwhile, survey or cultivation be made at any time by the Sarkar then you shall pay without any notice and objections jama of Hasil (culturable) and sanpatit (culturable sometimes and patit at others) land in accordance therewith from the said year. If under the survey the land is found to be more you shall pay additional jama at the said rate and if the land be found to be less you shall get remission at the said rate. Heaven forbid; but if any additional imposition or tax and such other charge be levied upon me or the rate (of rent) be enhanced then you shall pay without notice and objections the charges or, jama at the enhanced rate in accordance therewith from the said year; but in case the rate (of rent) payable by me be not enhanced I shall on no account be competent to enhance the rate payable by you. For arrears of revenue the property in arrears as well as the moveable and immoveable properties of yourselves and your representatives shall always remain liable and God forbid if

this mehal be sold by auction for arrears of revenue, the auction-purchaser shall get possession free of all encumbrances. Whatever laws with regard to realization of rents may be enforced or brought into operation in future as against the tenants shall apply to you and you shall not be competent to plead drought, inundation, death, desertion and other providential visitation with regard to payment of rents, nor the same shall be accepted. You go on enjoying (the property) with great felicity down to yours sons, sons" sons and so on in succession on keeping intact the limits and boundaries on excavating and filling up, and on making homesteads and gardens, and on being vested with rights of sale and gift.

7. It is clear from these terms that rights are conferred of a permanent and heritable character. To my mind, however, the lease does not fix maximum rent payable in perpetuity. The maximum rent for which it provides is payable for the years 1311-1313. The words are not, from and after 1311 or from 1311 a certain rent shall be paid but from the year 1311 to 1313 B. S., you shall pay jama at the said rate in respect of an area of 550 bighas over and above the area for which rent was initially made payable, in my view the lease does not determine the rent payable after 1313 B.S. This construction receives support from a succeeding clause which says: Moreover, if, in the meanwhile that as I suppose means during the period up to 1313, survey or cultivation be made at any time by the Sarkar, then you shall pay without any notice and objections jama in accordance therewith from the said year. The limitation of this provision to the period up to the year 1313 would be inexplicable if the maximum rent payable up to that year was regarded as a permanent rent which could never be increased. The shortness of the period 1311-1313 may also be noticed in comparison with the previous ten year period.

8. The Clause in case the rate (of rent) payable by me be not enhanced I shall on no account be competent to enhance the rate payable by you would also seem to relate to the period up to 1313.

9. In short the provisions of the lease appear to have been drawn with reference to the point of time at which it was known or anticipated that a settlement by the Government with the plaintiff would determine.

10. If the lease did not fix the rent payable after 1313, it was clearly open to the Revenue Officer to settle the rent payable by the defendants. As to this there was really little or no dispute before us.

11. In this view, it is not necessary to decide the question discussed as to the effect of S. 104-J and S. 192 of the Tenancy Act in a case where the rent settled by the Revenue Officer differs from the rent which would otherwise have been payable under an agreement between the parties entered into before the Bengal Tenancy Act came into force.

12. The decision of the Privy Council in *Pria Nath Das v. Ram Taran Chatterjee*, 1903 30 Cal. 11 which was much relied on for the tenants is not a decision on the scheme

and provisions of the Tenancy Act but on the different provisions of another Act. The land there moreover was apparently before resumption included in a permanently settled area and the rent was permanently fixed.

13. In my opinion the appeal should be dismissed with costs.

14. The Rule will be discharged without costs. It was not pressed.

B.B. Ghose, J.

15. I agree.