(1922) 02 CAL CK 0056

Calcutta High Court

Case No: None

Raja Jogendra Kishore Roy Choudhury		APPELLANT
	Vs	
Sheikh Aktar and Others		RESPONDENT

Date of Decision: Feb. 27, 1922

Citation: AIR 1923 Cal 278 : 67 Ind. Cas. 998

Hon'ble Judges: Panton, J; Newbould, J

Bench: Division Bench

Judgement

1. This is an appeal against the decision of the Special Judge of Mymensingh reversing the decision of the Assistant Settlement Officer of that District. The main point arising in this appeal is whether the learned Judge has rightly held that the plaintiff appellant is not entitled to excess rent for excess area. The Assistant Settlement Officer found that the areas of the holdings in certain khatians were larger at the time of the Survey and Settlement than the measurements shown in the landlord''s papers, and on this basis granted the landlords additional rent for additional area. This decision has been reversed on the finding that there is nothing to show that at the inception of the tenancies rents were settled or that it was understood that rents should be settled by assessment on areas.

2. This finding is not sufficient for the disposal of the question. The learned Judge appears to hare fallen into the error similar to that pointed out by a Division Bench of this Court in the case of Durga Priya Choudhury v. Hazra Gain 62 Ind. Cas. 453 : 25 C.W.N. 204.. There it was held that the landlord''s case did not depend on his being able to prove what happened at the inception of the tenancy, If the landlord can show that since the creation of the tenancy, rent had been assessed, and that when rent was last assessed, the assessment was on the basis of a certain area and that the defendants are in possession of land in which no rent was assessed at the time, then the landlord is entitled to increase of rent. The learned Special Judge has not found whether or not there has ever been assessment of rent on the basis of area

and, if so, whether that area is less than the land now found to be held by the tenants. He has not come to a finding an the essential point whether the tenant is in occupation of the land in which rent had not been assessed and for which he is bound to pay rent. It is contended on behalf of the defendants-tenants that from the judgment of the lower Appellate Court it is clear that he does not believe that there was ever any assessment of rent based on the area held by the tenant. But it is the duty of the Judge in his judgment when sitting, as the final Court of fact to state clearly what his findings are, and this Court sitting in second appeal cannot deduce from casual statements in the judgment findings of fact which are not already expressed.

3. Two other points were taken on behalf of the appellant, but there is no substance in them. One ii that the finding of the length of the Gaj 22 1/2 inches is not justifiable. This is a question of fact and no question of law arises in this connection. The next point is that the lower Appellate Court should not have remanded the case in respect to khatians NOS. 171 and 181 for finding whether the rents were mukarari or not. The issue as to this was clearly made in the written statement, and as no issue was formally framed before the Court there cannot be held to be any waiver of this contention because the Assistant, Settlement Officer when writing his judgment omitted to include this in the issues; nor was the learned Special Judge debarred from holding a finding on this issue necessary because the point was not expressly raised as regards khatian No. 171 in the grounds of appeal to him. The appeal raised the question of the enhancement of rent in khatian No. 171 and that was sufficient to justify the appellant''s Pleader arguing the point, that the holding was mukarari when the appeal was heard.

4. Then result is THAT this appeal must be allowed. The decree of the lower Appellate Court in so far as it relates to enhanced rent u/s 52 of the Bengal Tenancy Act is set aside and the case sent back to that Court to be re-heard in the light of the observations we have made.

5. The costs will abide the result.