

**(1927) 05 CAL CK 0030****Calcutta High Court****Case No:** None

Haran Chandra Karmakar

APPELLANT

Vs

Kishori Lal Ghosh

RESPONDENT

**Date of Decision:** May 19, 1927**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 105, 50

**Citation:** AIR 1929 Cal 789**Hon'ble Judges:** Rankin, C.J; Cammiad, J**Bench:** Full Bench**Judgement**

Rankin, C.J.

In this case the question arises in a proceeding before the Assistant Settlement Officer u/s 105, Ben. Ten. Act, The position is quite shortly this that the plaintiff has three causes of action. He puts forward a kabuliat as being the governing document of this tenancy and he asked first of all for Rs. 5 to be allowed because that sum of Rs. 5 was, on the basis of the terms of the kabuliat, a suspension of rent on account of 3 1/2 bighas of the holding being submerged under water at that time. He asked secondly for enhancement of rent because of rise in the price of the crops and he asked thirdly additional rent for additional area. There can be no doubt that the claim for Rs. 5 is a claim based upon the kabuliat ; that appears from the plaintiff's own claim before the Settlement Officer. The question of excess land is plainly a claim based upon the kabuliat not because he could not get it but for the kabuliat under the Bengal Tenancy Act but because it is immediately necessary to enquire exactly what land was then comprised within the kabuliat in order that one may know whether there has been an encroachment or not. The kabuliat contains the usual terms:

Whenever you so desire at any future time you will measure the land and for the land thus found out on measurement you will be competent to settle the jama according to the rates prevailing for the different classes of land in the village....

2. Now in that kabuliat there was an interpolation:

measurement of the land will be made in accordance with the terms of this kabuliat by a rasi of 80 cubits, 1 cubit being equal to 18 inches.

3. It all depends upon the standard of measurement employed at the time of this kabuliat, what area was included in it and the plaintiff when he had his claim put forward under this kabuliat insisted upon it being accepted as the term of the tenancy including the interpolation.

4. Now the question arises because the lower appellate Court has found that the kabuliat itself is not a forgery altogether but that it is clear enough that this writing in the margin is a subsequent interpolation. In dealing with the kabuliat it appears that the interpolation must have been made by a person in whose possession the kabuliat was, namely from the side of the landlord and the doctrine which is relied on in this appeal is the doctrine laid down in the case of *Master v. Miller* [1891] 4 T.R. 320 a doctrine which has been stated in this way:

whenever any instrument is purposely altered by a person in lawful possession of it in a material part of it, the instrument is void for the purpose of enabling any person to sue on it or to defend himself by using it as a direct defence depending on its obligatory force as an instrument.

5. These are the words used by Brett, L. J., in *Supfel v. Bank of England* [1882] 9 Q.B.D. 555.

6. The lower appellate Court has held that the tenant has proved that he has held the tenancy at an unvarying rate of rent for over 20 years and when the tenant appeals to the presumption u/s 50, Ben. Ten. Act, that lower appellate Court holds that the claim would be good but for the fact that the kabuliat shows that the jama was created in 1275.

7. We have therefore to consider whether this kabuliat may be used in connexion with that point in connexion with the question of Rs. 5 the suspended rent and the question of additional rent for the excess area. As the tenant has succeeded upon all the points except on the question of rise in the price of crops and haja, we consider that aspect of the case first.

8. In my judgment this kabuliat in these circumstances is not evidence at all on the part of the landlord because it is the foundation first of all of his claim to the Rs. 5. In the second place I do not think it is any evidence on the question of the rise in the price of staple crops. *Prima facie* the tenant has a tenancy which would entitle him to the presumption that he held it at a fixed rate of rent since the Permanent Settlement. This document has been put forward in a claim for enhancement of rent as the foundation of the landlord's title to enhance the rent because in its absence the presumption u/s 50 would take away the claim altogether. The landlord has been using the very terms of the kabuliat to show the origin of this tenancy to rebut

this presumption; and to say that that can be distinguished from a case in which he is suing on the kabuliat is to my mind a distinction without difference. The landlord takes his stand on this kabuliat as the origin of the tenancy and fails to prove it otherwise. The presumption u/s 50, Ben. Ten. Act therefore prevails against him.

9. In my judgment therefore the correct view is to allow the appeals by the defendant and to find that he has a tenancy the rent of which is not enhancible by virtue of the presumption u/s 50 disregarding the kabuliat. In the same way the claim for Rs. 5 as charged is also disallowed. In my judgment the plaintiff's claim for excess rent for excess-area must be disallowed, first of all it is impossible to make that case without putting in the kabuliat as the basis of the case; secondly it was. with respect to this very matter that the interpolation was originally put in; and thirdly the claim laid was upon the dooument as altered and not upon the document as it originally stood.

10. In my judgment the principle of the case of Master v. Miller [1891] 4 T.R. 320 should be enforced very strictly when the occasion for its application arises. In this case I think the result is that the defendant's appeals should be allowed with costs and the cross-objection of the plaintiff is dismissed with costs.

Cammiad, J.

11. I agree.