

(1921) 03 CAL CK 0029**Calcutta High Court****Case No:** None

Ambica Charan Sen

APPELLANT

Vs

Girish Chandra Sen and Others

RESPONDENT

Date of Decision: March 16, 1921**Citation:** 68 Ind. Cas. 719**Hon'ble Judges:** Suhrawardy, J; N.R. Chatterjea, J**Bench:** Division Bench**Judgement**

1. This appeal arises out of a suit for rent at the rate of Rs. 43-120 a year. The defense was that the rent was Rs. 5. It appears that a part of the land which was held by the defendants under the plaintiff was Diara land and the rent of the Diara land was settled at Rs. 43-12 under the Diara Act XXXI of 1853.

2. The Court of first instance gave a decree to the plaintiff at the rate of Rs. 48-12 annas. On appeal the learned Subordinate Judge has held that the plaintiff was bound by the contrast contained in a solenamah under which the defendants were liable to pay rent only at the rate of Rs. 5 and that such a contrast cannot be affected by the settlement of rent under the Diara Act. He relied upon the case of Muktaheihi Dasi v. Srinath Das 26 Ind. Cas. 215 : 19 C. L. J. 614 and there are several other cases on the point, *fr(sic)ee* Mohendra Nath v. Shyam Lal 23 Ind. Cas. 16 : 19 C. L. J. 308 : 18 C. W. N. 907 Pria Nath Das v. Ramtaran Chatterjee 30 C. 811 : 7 C. W. N. 601 : 30 I. A. 159 : 8 Sar P. C. J. 497 (P. C) Zamir Mandal v. Tarini Charan Singh 5 Ind. Cas. 296 : 11 C. L. J. 60 Pirthi Chand Lal Chowdhury v. Basarat Ali 3 Ind. Cas. 449 : 37 C. 30 : 13 C. W. N. 1149 : 10 C. L. J. 343 and Surendra Nath Roy v. Dwarka Nath Chakravarty 50 Ind. Cas. 856 : 24 C. W. N. 1 : (1910) M. W. N. 811 (P. C.) The learned Vakil for the appellant contended that the cases referred to above do not apply to the facts of the present case, firstly, because the contrast which was relied upon by the learned Subordinate Judge was not produced before the Court of first instance, and although it was produced before the Appellate Court, that Court did not admit it, though it was relied upon in the judgment without recording any reasons for the

same. Secondly, because the rent was not fixed for ever by the contract and there was, therefore, no bar to the plaintiff's getting a decree at the rate of Rs. 4312 and thirdly, because the rent settled under the Diara Act has also been recorded under the Bengal Tenancy Act.

3. The last question seems to us to be an important one, because even if the plaintiff is bound by the contract set up by the defendants the defendant is liable to pay the rent settled under Chapter X of the Bengal Tenancy Act. The learned Subordinate Judge says that the rent was not settled under any provision of the Bengal Tenancy Act, The learned Munsif, however, states that the rent settled u/s 2 of the Diara Act of 1858 has been recorded in the settlement records prepared under the Bengal Tenancy Act. Some papers were shown to us from the records which would seem to support the statement made in the Munsif's judgment Evidently the attention of the learned Subordinate Judge was not drawn to those papers. We think that there should be a finding upon the question whether the rent fixed under the Diara Act was also the rent settled under the Bengal Tenancy Act.

4. With regard to the first contention it appears that when the contrast relied upon by the defendants was produced before the lower Appellate Court, the learned Subordinate Judge made an order to the effect that it would be considered at the hearing, but no order has been recorded on the point either in the order-sheet or in the judgment.

5. We think the learned Subordinate Judge ought to have recorded an order admitting the documents in evidence when it relied upon them in its judgment, and also recorded reasons for admitting the document in evidence at the appellate stage. The learned Vakil for the respondents has contended that there are grounds for the admission of the document at the appellate stage; but if that be so, the Court below ought to have recorded its reasons for the same.

6. We, therefore, think that the case should go back to the lower Appellate Court for a finding upon the question whether the rent claimed by the plaintiff was settled under Chapter X of the Bengal Tenancy Act, and that Court will state the reasons why the document should be admitted in evidence at the appellate stage.

7. The appeal will be retained on the file of this Court, and the finding of the lower Appellate Court will be returned within two months from the arrival of this order in that Court. The other questions raised will be considered after the arrival of the finding from that Court.