

(1915) 05 CAL CK 0036

Calcutta High Court

Case No: None

Gobinda Chandra Saha Sardar  
and Others

APPELLANT

Vs

Lalit Mohan Roy

RESPONDENT

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**Date of Decision:** May 19, 1915**Acts Referred:**

- Bengal Cess Act, 1880 - Section 41

**Citation:** 33 Ind. Cas. 352**Hon'ble Judges:** Roe, J; Asutosh Mookerjee, J**Bench:** Division Bench

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### Judgement

Asutosh Mookerjee, J.

This is an appeal by the defendants in a suit for recovery of arrears of rent. The controversy relates to the liability of the parties in respect of cesses. The lease executed on the 2nd June 1902 fixes the rent at an aggregate sum of Rs. 1,151-6-16-2 krants inclusive of cesses and the dues of the superior landlord; out of this sum, Rs. 600 is payable by the tenants direct to their grantor and the remainder to the superior landlord. There is also a provision that the tenants will every year deposit, in the name of their landlord, in the office of the zemindar, the sudder rent payable to the zemindar and the cesses thereupon payable by their landlord. It is finally stipulated that if any new tax be imposed by the Government in future and if the same be payable by the subordinate tenure holder, the tenants will successively remain bound to pay the tax separately in the office of their landlord in addition to the aforesaid fixed road cesses and public works cesses. The contingency which has happened is that for the years in suit the zemindar is entitled to a smaller amount on account of cesses than was contemplated by the lease, that is, Rs. 80 and odd instead of Rs. 86 and odd; in other words, the amount payable to the zemindar was reduced from Rs. 551 and odd to Rs. 545 and odd; notwithstanding this circumstance, the plaintiff has sued to recover only the annual sum of Rs. 600 on

account of rent. The defendants contend that the plaintiff should claim more, because the plaintiff is entitled to the benefit of the reduction in the amount payable by the defendants to the zemindar on account of cesses. The plaintiff, however, feels shy of this apparently tempting offer and persists in his claim for Rs. 600 and no more. It is not difficult to see that the defendants anticipate a time when a larger sum may become payable to the zemindar on account of cesses, and they contend that the plaintiff is entitled to receive, not Rs. 600, but Rs. 600 increased or reduced by the reduction or increase in the amount payable as cesses. The question, consequently, requires examination, whether upon the terms of the lease, the plaintiff is entitled to an invariable sum of Rs. 600 regardless of the amount of cesses actually payable to the zemindar or whether he is entitled to a variable amount, that is, Rs. 600 either increased or reduced by the fall or rise in the amount of cesses payable by the defendants to the zemindar. Upon this point, the Courts below have expressed divergent opinions. We think the view adopted by the Subordinate Judge is correct.

2. It is plain that the concluding passage of the lease, whereon stress was laid by the defendants, relates to a new tax not foreseen by the parties to the contract at the time the lease was granted and does not bear upon the solution of this question. It has no reference to the contingency which has happened and which may happen in an altered form in future, namely, an increase or decrease in the amount of cesses on account of re-valuation of the estate. In such a contingency, as was pointed out in *Mohanund Sahay v. Saidunnessa Bibi* 8 C.L.J. 525 : 10 C.W.N. 154; *Krishna Chandra Basu v. Mohendra Nath Basu* 9 Ind. Cas. 704 : 13 C.L.J. 212 the liabilities of the parties must be determined according to the Statute, unless there is a clear provision in the lease to show that the parties have contracted themselves out of the provisions of Section 41 of the Bengal Cess Act. In the case before us, the lease plainly provides for the payment of a fixed sum of Rs. 600 by the defendants to their landlord, regardless of the amount actually paid as cesses. In this view, the decree of the Subordinate Judge must be affirmed and this appeal dismissed with costs.