

## Gobinda Chandra Saha Sardar and Others Vs Lalit Mohan Roy

**Court:** Calcutta High Court

**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

### 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.