

(1925) 07 CAL CK 0053

Calcutta High Court

Case No: None

Harihar Roy

APPELLANT

Vs

Sarat Chandra Basu Chowdhuri

RESPONDENT

Date of Decision: July 20, 1925

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 30(b), 39, 50

Citation: AIR 1926 Cal 661 : 91 Ind. Cas. 734

Hon'ble Judges: Graham, J; Babington Newbould, J

Bench: Division Bench

Judgement

1. The plaintiff brought this suit for recovery of arrears of rent at a jama of Rs. 12-15-6. He also claimed enhancement of rent either u/s 7 or u/s 30(b) of the Bengal Tenancy Act. The defendant alleged that his jama was Rs. 6-6-0 and that he was a raiyat holding at fixed rate of rent, so his rent could not be enhanced. The First Court decided in the defendant's favour on both points. The lower Appellate Court has held, that the rental is that claimed by the plaintiff and that the defendant is a raiyat with right of occupancy and that his rent is liable to be enhanced u/s 30(b) of the Bengal Tenancy Act, but has refused a decree for enhancement of rent on the ground that there is no evidence to prove the claim. The defendant has preferred a second appeal and the plaintiff has taken a cross objection to the refusal to pass a decree, for enhancement of rent.

2. The defendant's case was that he was a tenant under the previous holders of a chaukidar chakran tenure which included the land in suit, and that he paid rent regularly to them since 1287 at the rate of Rs. 6-6. The lower Appellate Court has held, that the rights created by the Paiks who held the chakran tenure came to an end, on the resumption of the land by Government and that consequently the evidence as to the rent paid to the Paiks is of no help to the defendant. The case relied on by the Subordinate Judge Satyendra Nath Banerjee v. Krishnasakha Kar 69 Ind. Cas. 7 : 35 C.L.J. 185 : AIR (1922) (c) 189 supports his decision.

3. It is contended that as the defendant was a settled raiyat at the time of resumption, although his tenancy terminated, his right as settled raiyat remained, and that, therefore, he is entitled to rely on his previous rate of rent Rs. 6-6. How the previous payments would help him after his tenancy has come to an end we are unable to understand. But the appeal must fail on the findings of fact. The lower Appellate Court has held that the pottah on which the defendant relied and which was accepted by the Munsif has not been proved to relate to the land which is the subject of the suit. It is further found that the rent was paid to the plaintiff by the defendant at the rate now claimed and that, there must have been settlement with the defendant at a rate of rent higher than the rent he paid to the Paiks. On these findings we cannot hold that there was any error of law in deciding that the presumption in the plaintiff's favour as to the correctness of the rate of rent entered in the Khatian has not been rebutted. Though the lower Appellate Court has found that the entry that the defendant is a tenure-holder is incorrect that would not by itself rebut the presumption as to correctness of the entry of the rent. The lower Appellate Court is also right in holding that the provisions of Section 115 of the Bengal Tenancy Act prevent the defendant relying on the presumption of Section 50 even if it be held that he was paying rent at the same rate from 1287 until the land was resumed.

4. The plaintiff's cross-objection must prevail. We are told that there is some oral evidence to support the plaintiff's claim for enhancement of rent. But apart from this in a case of claim for enhancement under Clause (b) of Section 30 it is the duty of the Court to refer to the price lists prepared u/s 39 Whether the parties to the suit produced them or not, *Nabi Chandra Shah v. Kula Chandra Dhar* 6 Ind. Cas. 506 : 37 C. 742 : 14 C.W.N. 914.

5. The result is that the appeal is dismissed with costs. The cross-objection is allowed with costs and the case will be remanded to the lower Appellate Court for determination as to whether on the evidence on the record and of the price lists published in the Gazette the plaintiff is entitled to enhancement of rent under Clause (5) of Section 30 of the Bengal Tenancy Act, and if so to what extent the rent should be enhanced.