(1924) 03 CAL CK 0052

Calcutta High Court

Case No: None

Pranesh Chandra Sen and Others		APPELLANT
	Vs	
Banwarilal Shaha		RESPONDENT

Date of Decision: March 13, 1924

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 30(a), 31

Citation: AIR 1925 Cal 898

Hon'ble Judges: Mukherji, J

Bench: Division Bench

Judgement

Mukherji, J.

The appeal as presented before me is confined to the portion of the plaintiffs'' claim in a suit for arrears of rant for the years 1322 to 1325 B.S. in so far as it is a claim for enhancement of rent based upon Section 30, Clause (a) of the Bengal Tenancy Act, that is to say, on the ground that the rate of rent) paid by the rah/at is below the prevailing rate paid by occupancy raiyats for lands of a similar description and with similar advantages in the same village or neighbouring villages and that there is no sufficient reason for his holding at so low a rate. The plaintiffs'' case was that the prevailing rates in the village and other neighbouring villages were Rs. 6-8 per pakhi of khad lands, Rs. 4-8 per pakhi of palan lands and Rs. 2 per pakhi of Fasli lands. The defendant''s case was that the prevailing rates were Rs. 2-8 per pakhi of khad lands, Rs. 1-4 per pakhi of palan lands, and 4-annas to 8-annas per pakhi of Fasli lands. The plaintiffs alleged that the lands in suit were settled with one Ram Kishore the predecessor of the defendant in 1271 B.S. at an annual jama of Rs. 16-9 and that Ram Kishore was given a remission of Rs. 11-l for certain services rendered by him to the settles so that since then a rental of Rs. 5-8 was being paid for the lands but that there was no longer any reason to grant that remission. The defendant averred that the story of the settlement of the lands with the predecessor at a jama of Rs.

16-9 and of a remission of Rs. 11-1 being granted for services was false and he asserted that he and his predecessor had been holding the lands in kayami right at an annual jama of Rs. 5-8 from before the time of the Permanent Settlement.

2. In the trial Court, a Commissioner was appointed all the plaintiffs'' instance to ascertain the quantities and the qualities of the lands and, that having bean done, a Sub-Deputy Collector was deputed to hold a local enquiry and submit a report and, ha having submitted a report after such local enquiry, the same was accepted by the Court. The primary Court eventually found that the prevailing rates as found by the Sub-Deputy Collector were correct and that they were Rs. 6-8 per pakhi of khad lands, Rs. 4-8 per pakhi of palan lands and Rs. 2 per pakhi of Fasli lands and that those were fair and equitable. As to the plea of kayami right set up on behalf of the defence, that Court; found that it was false and, in that view of the matter, so far as this part of the claim was concerned, the Court made a decree granting an enhancement to the plaintiffs to take effect from the year 1329 B.S.

3. On appeal by the defendant, the learned Subordinate Judge held that the prevailing rates had not been established as payment, of rent at) these rates had not been proved, and that the enquiry held by the Sub-Deputy Collector was not sufficient and no definite conclusions could be arrived at from the evidence of the witnesses who had been examined by the Sub-Deputy Collector. The observations which the learned Subordinate Judge made with regard to this matter run thus: " Under these circumstances, I must hold that the prevailing rates of rent have not been properly ascertained. The question now arises whether I should remand the case which has already been pending for a long time. A full enquiry would entail heavy costs. The proper course, in my opinion, is to disallow the plaintiffs'' claim for enhancement on the ground of prevailing rates in the present suit but to leave the plaintiffs free to claim enhancement on this ground in future when they might come prepared with fuller materials." As to the story of the jama having been fixed at Rs. 16-9 and of a remission of Rs. 11-1 being granted, the learned Subordinate Judge was of opinion that he was unable to accept the plaintiffs'' version to the effect that it was a remission meant to be only of a temporary character and he observed as follows :-But I do not mean that the rent of Rs. 5-8 was necessarily intended to be fixed in perpetuity. This rent was almost exactly one-third of the full rent according to the plaintiffs case. So I order that this proportion of remission should be maintained for all time and, if any enhancement is to be made on the basis of the prevailing rates, the rent of this holding should be one-third of the full rental according to those rates."

4. Now, it has been argued on behalf of the plaintiffs who are the appellants in this Court that the learned Subordinate Judge was wrong in disallowing the portion of the plaintiffs'' claim based on Section 30, Clause (a) of the Bengal Tenancy Act on the ground of prevailing rates and relegating them to a fresh suit for that purpose and that, if he found that the report of the Sub-Deputy Collector was not convincing or

that the other materials on the record were not sufficient for the purpose of finding out what the prevailing rates were in order to enable him to come to a definite conclusion on the question, he should have directed a further enquiry by the Sub-Deputy Collector. It has been further argued, that, if the learned Judge was willing to leave the question of prevailing rates open, he should not have fettered the hands of any Court that may subsequently come to deal with the matter by laying down that "if any enhancement is to be made on the basis of the prevailing rates, the rent of this holding should be one-third of the full rental ac-cording to those rates," and that, therefore, this direction should, in any event, be expunged from the judgment of the lower appellate Court.

5. The answers given by the respondent to the contentions of the appellants as set forth above are that it was for the plaintiffs to prove the prevailing rates in order to succeed in their claim, that the criticisms of the learned Subordinate Judge against the insufficiency of the report of the Sub-Deputy Collector and the evidence adduced on behalf of the plaintiffs ''were just and they substantially amounted to this that payment at the rates specified had not been proved and that, therefore, the materials were not adequate for determining the prevailing rates. In these circumstances, the learned Vakil says, the Subordinate Judge would have been quite justified in dismissing the plaintiffs'' claim altogether; but, instead of doing so, he has given the plaintiffs a further chance of proving the rates upon better materials, is a subsequent suit, so, practically, there is no prejudice to the appellants and, therefore, the judgment of the learned Judge of the Court of Appeal below should not be interfered with. With regard to remission, it has been argued by the learned Vakil for the respondent, that) the question whether the remission had been granted only for a time or whether it was of a permanent character was one of the questions which arose for determination in the case and the learned Subordinate Judge was bound to record a finding on that question in his judgment, that if he has done so, it cannot be said, unless it is shown that the finding is not bused upon proper materials, that he is wrong in recording that finding and further that the said finding amounts to a finding on a question of fact which should not be interfered with in second appeal.

6. Now, with regard to the first of these questions, I have carefully considered the matter and it seems to me that, although the learned Subordinate Judge would have been perfectly justified in taking the view that it was for the plaintiffs to prove their case and that, inasmuch as they bad failed to prove it, their claim should be dismissed the learned Judge did not, as a matter of feet, adopt that course. Instead of dismissing the plaintiffs'' claim outright and for all times, the learned Judge declined to direct a further enquiry upon certain grounds which he noted in his judgment and gave the plaintiffs a further chance of proving their claim in a sub" sequent suit; and, in doing so, I think he was exercising a judicial discretion which pre-supposes that he must have felt that, if the plaintiffs were not successful in proving their claim, it was not on account of any fault on their part. In fact, it would

seem that the plaintiffs took all steps that were necessary for them to take in order to prove this part of their case. They applied for a commission for the purpose of getting the lands measured and their qualities ascertained. They applied for an enquiry by a Sub-Deputy Collector such as is contemplated by Section 31 of the Bengal Tenancy Act. That there are different classes of lands in this village and that there are prevailing rates for the different classes of lands are facts which are admitted on both sides. The only question is what the prevailing rates are. The Sub-Deputy Collector''s report was accepted as correct by the trial Court and, if a different view of it was taken by the Court of Appeal to which the matter was taken after the decision of the trial Court, it cannot be said that there was any blame which could legitimately attach to the plaintiffs for the conduct of their proceedings. The argument advanced on behalf of the respondent with regard to this matter, I have also carefully considered and it seems to me that, apart from the question of additional costs which the plaintiffs will have to incur in ease they are asked to prove their claim in a subsequent suit, there is also this prejudice to them, namely, that they may not succeed in getting an enhancement of rent for many years to come. I have examined carefully the grounds upon which the learned Subordinate Judge declined to direct a further enquiry in the present proceedings. Those grounds shortly are that it would be necessary in the event of the matter being re-opened to order a remand, that the suit had been pending for a long time and that heavy costs would have to be incurred. None of these grounds, to my mind, was sufficient to justify the order declining to reopen the proceedings, which bad terminated in a decree in favour of the plaintiffs and which decree was being assailed before the Court of Appeal below. In the first place, it would not be necessary to make an order of remand. The Appellate Court could direct a further enquiry setting out what further materials were wanted to come to a proper decision. The fact that the suit had been pending for a long time was no ground for not taking steps to bring it to a satisfactory termination. As to costs they will have to be incurred in either case and it is just possible that, if the present proceedings are re-opened, the costs will be much less than what they would otherwise be. To my mind, therefore, the grounds upon which a further enquiry has been refused are not at all sufficient. In this connection, I would only refer to the pertinent observations made by Sir Lawrence Jenkins, C.J., in the case of Nabin Chandra Saha v. Kula Chandra Dhar [1910] 37 Cal. 742 to which my attention has been drawn by the learned Vakil for the appellant. At page 745, the learned Chief Justice, in circumstances similar to those appearing in the present case, observed as follows, " Next, I shall deal with the point that the Courts have erred in so far as they have failed to give effect to the appellants'' contention that the rate of rent paid by the defendants is below the prevailing rate paid by occupancy raiyats for land of a similar description and with similar advantages in the same village or in neighbouring villages. It appeared to the Munsif that the prevailing rate of rent could not be satisfactorily ascertained without a local enquiry and so the Court directed a local enquiry to be held under Chapter XXV of the old C.P.C., as allowed by Section 31, Clause (6) of the Bengal Tenancy Act.

It seems that three separate enquiries were held, and still the Munsif was not satisfied with the report that he got. Apparently, however, he did not think it necessary or proper to direct; a further enquiry. As we have determined that the appellants are entitled to succeed on the ground of an error in relation to their objection that their contention as to a rise in prices has not had effect given to it. I think it is legitimate, in the circumstances, for us to interfere in this part of the case too, and to point out the error into which the lower Courts have fallen. I am not going to enter into the question as to whether the Munsif has correctly read the last report which was made to him. I will assume, for the sake of argument, that he has correctly read it. But on this assumption he should have passed a further order indicating clearly to the Revenue Officer, what precisely it was that he desired to be formulated in the report. The Revenue Officer can hardly be expected to know the requirements of the civil Courts in this respect, and it is right and proper that the civil Court, in directing a local investigation should indicate to the officer holding the investigation what it is that the Court precisely requires and I think it will be the duty of the Court to pass such an order now, in case the lower Court is satisfied that the present report is not sufficient for its purpose."

7. With regard to the second question noted above, reliance has been placed by the learned Vakil appearing on behalf of the respondent as also by the learned Subordinate Judge upon the case of Umesh Chandra Roy v. Surendra Chandra Dutt [1919] 29 C.L.J. 6 That, however, was a case where upon the construction of the kabuliyat by which the tenancy was created certain principles were laid down which would enable the Court to determine whether the remission granted was to operate for a time or was of a permanent character. The precise question which arises in the present case is whether the conduct of the parties shows that the remission that was granted to the tenant originally was intended to operate in future for all times to the extent of two-thirds of the rent that might to the fair and equitable rent for the lands; That question does not seem to have been considered by the learned Subordinate Judge. In the circumstances which he has carefully noted in his judgment, he has come to the conclusion that the remission was of a permanent nature. But as to whether the original intention of the parties was that, whatever might be the amount of rent two-thirds out of it would have to be remitted in all future times, it is not a matter upon which it can be said that the attention of the learned Judge was directed at all. In fact, reading his judgment, it does not appear to me that he has recorded any finding of fact on that question. He has dealt with the circumstances and he says " the remission was made in consideration of services rendered by him, that is, the lessee, and the fact of the remission being continued for twenty years after the death of the lessee and even after the property had passed out of the hands of the original lessor leads to the inference that the remission was intended to be a permanent one." It should be noted that the remission there referred to was a remission of Rs. 11-1-0 out of the total rent of Rs. 16-9-0 and the learned Judge at once makes the observation in the next passage in

his judgment: " But I do not mean that the rent of Rs. 5-8-0 was necessarily intended to be fixed in perpetuity. This rent was almost exactly one-third of the full rent according to the plaintiff''s case. So I order that this proportion of remission be maintained for all time." It would seem, therefore, that there is no finding such as may be treated as a finding of fact to the effect that the original intention of the parties was that whatever might be the rent, two-thirds of it would have to be remitted to the tenant in consideration of the services rendered by his predecessor. This matter also should be further investigated.

8. For all the reasons stated above I am of opinion that the decree of the learned Subordinate Judge should be set aside and the case sent, back to his Court so that the matter may be dealt with in the. light of the observations made. Having regard to the circumstances of the case, I make no order as to costs.