**AIR 1925 Cal 181**

**Calcutta High Court**

**Case No:** None

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| Muhammad Sulaiman | APPELLANT |
| Vs | |
| Uma Charan Sil | RESPONDENT |

**Date of Decision:** March 6, 1924

**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 47

**Citation:** AIR 1925 Cal 181

**Hon'ble Judges:** M.N. Mukherji, J

**Bench:** Division Bench

**Judgement**

M.N. Mukherji, J.
The suit out of which this appeal arises was one for ejectment of the defendant on the expiry of a lease, dated the 22nd Falgun 1321 B.S., the terms of which expired on the 30th Chait 1325. The plaintiff was unsuccessful in both the Courts below and he has preferred this appeal to this Court.

2. Two contentions have been put forward in this appeal on behalf of the appellant. The first is that the tenancy is governed not by the provisions of the Bengal Tenancy Act but by those of the Transfer of Property Act; and the second is that assuming for the sake of argument, that the tenancy is governed by the Bengal Tenancy Act, the Courts below have erred in law in holding that the provisions of Section 47 of that Act stand in the way of the plaintiff"s recovering a decree.

3. In support of the first contention, the learned Vakil for the appellant has drawn my attention to the conditions of leases Exs. A and B executed respectively in 1908 and 1915. He has referred to the. description of the subject-matter of the lease Ex. B, and has urged that, inasmuch as the three plots which are covered by that lease are (1) 17 gundas and odd which is said to be the bank of a tank, (2) 14 gundas and odd which is described as the watery portion and (3) 2 gundas and odd which is said to be Muddat or waste land. A large portion of the tenancy is in respect of a tank and his contention is that

it should be held that the tenancy is not for agricultural or horticultural purposes. He has also referred to the terms of the two leases aforesaid and has contended that, inasmuch as there is no specific mention in those leases that they were being executed for the purpose of agriculture or horticulture the tenancy created thereby is to be regulated by the provisions of the Transfer of Property Act, and not by those of the Bengal Tenancy Act. On behalf of the respondent it is urged, so far as this contention is concerned, that the documents in question on the face of them appear to be in respect of a tenancy in favour of a non-occupancy raiyat and, therefore, the plaintiff is precluded from questioning the status of the raiyat and the character of the tenancy, the latter having derived his interest from the Court of Wards who executed those documents.

4. With regard to this matter, I may say at once that I am not prepared to place much reliance upon the words and expressions used in these documents, specially as they appear to have been executed in printed forms, which have been prescribed by the Board of Revenue for use in cases of tenants who are non-occupancy raiyats. In my experience, I have come across cases where these forms have been indiscriminately used with regard to tenancies for which they were never meant at all. Ah an instance I may refer to the lease which formed the subject-matter of the case of Gokul Mandar v. Padmanund Singh (1902) 29 Cal. 707.

5. It will be seen that in that case the lease which was on a printed form spoke of the tenant as a raiyat and, in spite of that, it was held by this Court that the tenant was not a raiyat but a tenure-holder and that judgment was affirmed by the Judicial Committee on appeal from the decision of this Court. Nor am I prepared to accept the argument which is put forward on behalf of the respondent that the plaintiff is precluded from questioning the status of the tenant or the character of the tenancy simply because his predecessor had described the lease as a lease in respect of a non-occupancy raiyat. It seems there is considerable divergence of judicial opinion on the question as to whether the description in the lease is to be taken as binding with regard to the status of the tenant or the character of the tenancy as between the contracting parties or their successors.

6. As an instance, I may refer to the case of Rajani Kant Mukerji v. Yusuf Ali (1916) 21 C.W.N. 188. However that may be the fact that the Court of Wards, presumably through its responsible officers chose to have those documents executed on forms which had been prescribed for use in cases of non-occupancy raiyats is a matter which, in my opinion, cannot altogether be ignored.

7. In order to determine the character of the tenancy, the Court has to look to the intrinsic evidence afforded by the documents themselves and, if the terms arc vague or ambiguous, the Court is entitled also to look to the surrounding circumstances and the conduct of the parties.

8. Before dealing with this matter it is just necessary to refer to a few authorities to which my attention has been drawn by the learned Vakil appearing on behalf of the appellant.

9. The first case relied upon by him is the case of Hedayet Ali v. Kamaland Singh (1913) 17 C.L.J. 411. That was a case where the question arose as to whether a lease for grazing purposes was to be treated as a lease for the purpose of agriculture and it was held therein that the mere circumstance that a considerable portion of the land comprised in the tenancy was let out for the purpose of grazing is not conclusive upon the question whether the lessee has or has not acquired the status of a raiyat." A further question arose in that case and it was to the effect as to whether, by the inclusion of a piece of garden land in the tenancy in question in that case, the tenancy created was one for the purpose of horticulture, and it was hold with regard to this question that the term " horticulture " means the cultivation of a garden or the science of cultivating or managing a garden including growing flowers, fruits and vegetables. If a lease is for the purpose of gathering fruits from the trees on the land, the lease is not for horticultural purposes.

10. The second case to which my attention was drawn by the learned Vakil for the appellant was the case of Nidhi Krishna Bose v. Ramdas Sen (1873) 20 W.R. 341, where it was held a right of occupancy is not acquired in " a tank except under certain circumstances.

11. Where land is let for cultivation and there is a tank upon it, the tank would go with the land; and if there was a right of occupancy in the land, there would be a right of occupancy in the tank as appurtenant to the land." The next case relied upon was the case of Mahananda Chakravarti v. Mangala Keotani (1904) 31 Cal. 937, in which it was decided that a suit for recovery of rent of a tank which was not a part of an agricultural holding but was used for rearing or preserving fish was not maintainable in a Revenue Court, the provisions of Act X of 1859 not being applicable to such a suit and that the term " land " in Section 6 of that Act means cultivated land and does not include a tank regarded as land covered with water.

12. The last of the cases upon which reliance was placed with reference to these contentions of the appellant was the case of Herendra Kumar Roy Choudhuri and Others Vs. Hara Kishore Pal, . That was a case where a raiyat transferred his homestead portion out of a non-transferable occupancy holding, in respect of which he was the tenant, to a pleader who purchased it for the purpose of residence and for carrying on his profession as a pleader, and the question arose as to whether the pleader by his purchase of that portion of the non-transferable occupancy holding had himself become a tenant with rights which appertained to a non-transferable occupancy holding and it was held upon the circumstances of that case that the pleader had obtained a new tenancy and those rights had not accrued to him. These cases, therefore, do not assist us in any way in the determination of the question as to the character of the tenancy or the status of the tenant, and, as I have said before, the Court must look to the terms of the documents themselves and also, if necessary, to the surrounding circumstances and the conduct of the parties.

13. Now, as the terms of the documents referred to above, it is true, as urged on behalf of the appellant, that a large portion of the area covered by the tenancy is tank. It is true also that in those documents there is no specific mention of the fact that the tenancy was being created for the purpose of agriculture or horticulture. But, on the other hand the documents in question speak of conditions to the effect that the rent would be increased proportionately as the lands become cultivable and also that the tenant would be liable to damages if the productive power of the lands be diminished in consequence of negligence on the part of the tenant. Then, again, it is to be observed that in the second of those documents, namely in Ex. B, all these plots are mentioned as Hasila. Furthermore, it has been found by the learned Subordinate Judge that from the defendant''s evidence it appeared that during his possession commencing from before the term of Ex. B the lands were paddy lands and that there were mango trees on the banks the fruits of which he enjoyed. Nextly, we find that the plaintiff himself has framed his suit as a suit for ejectment of a tenant under the provisions of the Bengal Tenancy Act.

14. Lastly the lands were recovered in the Cadastral Survey proceedings under the Bengal Tenancy Act. Taking all these facts together it is impossible to doubt the conclusion at which the Courts below have arrived that the tenancy is one which is to be governed by the provisions of the Bengal Tenancy Act and not by those of the Transfer of Property Act. The first contention put forward on behalf of the appellant therefore, in my opinion, fails.

15. With regard to the second contention, it has been urged that, inasmuch as there was a lease of 1908 under which the defendant was holding for a period of seven years and then on the expiry of that lease as a fresh lease was executed in 1.915 for a period of five years, and inasmuch as the suit for ejectment was instituted on the expiry of the second lease it could not be said that the provisions of Section 47 of the Bengal Tenancy Act would apply to the case. In support of this contention, reference has been made to the case of Rajanikant Mukerji v. Yusuf Ali 21 C.W.N. 188. In my opinion, that decision does not lay down any principle which may be of any use in the present case so far as this point is concerned. In the present case, the finding of the learned Subordinate Judge is that after the expiry of the term of the lease Ex. A, the defend-and held over for about eleven months after which the lease Ex. B was executed. Consequently, in my judgment, it is clear that the defendant was not admitted to occupation under the lease Ex. B. But that he had been in occupation of the land and the lease Ex. B was executed with a view to the continuance of that occupation. He is, therefore, not to be deemed to have been admitted to occupation by the lease Ex. B and, inasmuch as the suit for ejectment had been brought under the provisions of Section 44 of the Bengal Tenancy Act for ejectment of the defendant on the ground that the terms of that lease had expired, the plaintiff was not entitled to the relief he sought for in the present suit. The second contention also, in my opinion, therefore, fails.

16. The result, therefore, is that the appeal is dismissed with costs.