

**(1926) 01 CAL CK 0049**

**Calcutta High Court**

**Case No:** None

Beni Madhab Chaudhury and  
Another

APPELLANT

Vs

Bejoy Chand Mahatap Bahadur  
of Burdwan

RESPONDENT

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**Date of Decision:** Jan. 6, 1926

**Citation:** AIR 1926 Cal 1182

**Hon'ble Judges:** Cuming, J; B.B. Ghose, J

**Bench:** Full Bench

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### **Judgement**

B.B. Ghose, J.

These two appeals arise out of the suits brought by the plaintiff against the defendants in which certain prayers were made which I shall relate later on. Issues were framed in the Court of the Munsif as to whether there was the relationship of landlord and tenant between the plaintiff and the defendants with regard to the jama in suit, certain other issues were also framed relating to the right of enhancement and so forth.

2. The Munsif decided the question as regards the relationship of landlord and tenant against the plaintiff and in that view dismissed the plaintiff's suit. The claim in each of these cases was below rupees fifty and the Munsif was authorized u/s 153 of the Bengal Tenancy Act to decide suits for recovery of rent finally under that value.

3. There was an appeal by the plaintiff to the Subordinate Judge. A preliminary objection was taken on behalf of the defendants before the Subordinate Judge that the appeals before him were not maintainable having regard to the provisions of Section 153 of the Bengal Tenancy Act. This objection was given effect to by the Subordinate Judge and the appeals were dismissed as incompetent. Second appeals were preferred against that decision on behalf of the plaintiff and my learned brother Mr. Justice Chakravarti has held that Section 153 has no application to the

suits as framed, and, therefore, the appeals to the Subordinate Judge were competent and in that view he set aside the decree made by the Subordinate Judge and remanded the cases for trial before him on the merits. The view adopted by Mr. Justice Chakravarti was that there was a prayer for assessment of rent in these cases joined with a prayer for recovery of rent after assessment and his view was that when the suit was primarily for assessment of rent Section 153 of the Bengal Tenancy Act had no application.

4. The defendants have appealed against that decision of Mr. Justice Chakravarti. Babu Rupendra Kumar Mitter, who appears for the appellants, concedes that if the suits had been for assessment of rent, Section 153 of the Bengal Tenancy Act, would not apply and the plaintiff's appeal before the Subordinate Judge would have been competent. His contention, however, is that the suits in question were suits for recovery of rent although there was a prayer for a decree for enhanced rent and his grievance is that Mr. Justice Chakravarti had misconstrued the plaints in holding that the suits were mainly for assessment of rent. We have been taken through one of these plaints, the other being stated to be in the same terms. It is necessary to give the substance of some of the paragraphs of the plaint in order to understand the nature of the suit. In para. 3 of the plaint it is stated

a raiyati jama with the incidence of enhance ability at a rental of thirteen annas stood is the name of the defendants' predecessor-in-interest in the sherista of the late Labanga Chaudhurani. The defendants have been in possession of the said jama from the time of the putnidar by paying the jama assessed thereon.

5. Paragraph 6 runs thus:

The defendants in collusion with each other being in possession of the lands in suit up to now, it be declared that the rent of the lands in suit is thirteen annas and the plaintiff is entitled to get a decree on an enhanced rent being fixed according to the account given in Schedule (kha) owing to the rise in the price of staple food crops in the locality.

6. And the prayer portion, which is para. 7, runs thus:

The plaintiff accordingly prays (1) that it may be declared that the existing rent is thirteen annas a year for 11 cottahs of lands that a decree may be passed for arrears of rent and cesses according to the account given in Schedule (kha) by fixing the fair rent at Rs. 1-3-3½gds. a year on account of the rise in the price of staple food crops in the locality, for the years 1324 to 1327 B.S. Schedule (kha) states that the jama previously fixed was thirteen annas; by comparing the price of staple food crops in the locality for certain periods the claim is increased at the rate of seven annas odd and the enhanced jama per rupee is claimed at six annas odd.

7. The claim is made, as I have already stated, for Rs. 1-3-3½gds. odd. The question is whether this is a suit for assessment of rent or a suit for recovery of rent falling

within the provisions of Section 153 of the Bengal Tenancy Act. It is contended on behalf of the respondent that it is a suit for assessment of rent because a prayer for increase of rent includes a prayer for assessment of rent, and although he has claimed recovery of rent in the suits that is only an additional prayer which does not take away his right of appeal. It seems to me difficult to say that it is not a suit for recovery of rent and the prayer for enhancement of rent excludes the operation of Section 153 of the Bengal Tenancy Act. A perusal of the grounds on which an appeal is allowed as "given in Sub-section (1) of Section 153, would show that a right to enhance or vary the rent is a question which is contemplated for decision in a suit for rent, as that section provides that if the Court decides a question of right to enhance or vary the rent of a tenant there would be a right of appeal. It seems to me that it cannot, therefore, be said that because there was a prayer for enhancement of rent the suits should be considered as one for assessment of rent and this argument is also negated by the fact which has been repeatedly stated in the plaint that the rent payable was thirteen annas for the lands in suit. The declaration asked for was that the existing rent was thirteen annas, there was no prayer for assessment of rent on the allegation that the rent payable by the tenant was not ascertained. The case of Dhanukdhari Lal v. Baburam Ahir [1909] 10 Cri.L.J. 629 which was relied on by the respondent is a different case altogether. There the plaintiff alleged that a certain amount of rent was payable by the defendant to the plaintiff as well as to the Defendant No. 2 and in his suit he alleged that there was a batwara between himself and Defendant No. 2 and asked the Court to assess the rent properly payable to him. The learned Judges observed:

What the plaintiff sues for is not only rent; the ground of his suit is batwara between himself and Defendant No. 2; he sets out this partition and asks the Court to assess the fair rent which is properly payable to him on the basis of that batwara. He also asks that arrears of rent may be paid to him. He has joined Defendant No. 2 obviously for the reason that he may be bound by the assessment of rent which he asks for and the suit is therefore, for assessment of rent independently of the prayer for the recovery of rent from Defendant No. 1.

8. The learned Judges, therefore, held that the case was not a suit instituted for recovery of rent u/s 153 of the Bengal Tenancy Act. Obviously the object of that suit was to bind the plaintiff's co-sharer also with regard to the question of apportionment of rent between the plaintiff and Defendant No. 2. For these reasons it seems to me that the order of remand made by Mr. Justice Chakravarti should be vacated and both the appeals should be allowed with costs in this Court as well as before Mr. Justice Chakravarti.

Cuming, J.

9. I agree.