Raja Janakl Ballav Sen Vs Maharaj Kumar Gopal Lal Roy and Others

None

Court: Calcutta High Court

Date of Decision: March 6, 1912

Citation: 15 Ind. Cas. 301

Hon'ble Judges: Mookerjee, J; Harington, J

Bench: Division Bench

Judgement

1. The sole point in controversy in this appeal, which arises out of a suit for rent, is, whether the landlord or the tenant is entitled to the benefit of an

annual deduction in the Government demands to the extent of Rs. 48-7-3. The patni lease, on the basis whereof the claim by the landlord, the

plaintiff appellant, is founded, was executed on the 8th June 1896. Under that lease, the annual rent for the patni was fixed at Rs. 1,580-8-7. This

amount is described in more than one place in the instrument as ''the fixed jama."" After reciting that the annual rent was fixed at this sum, the

document proceeds to describe the mode of payment; Rs. 1,080-8-7 was to be paid into the Collectorate on account of the Government demands

and the balance Rs. 500 was to be paid to the landlord as malikana. The Government demands were on account of Revenue, Road cess and dak

cess, and the payment thereof was undertaken by the tenant. In 1906, the Government demand in respect of cesses appears to have been reduced

by Rs. 487-3 a year. The contention of the landlord is that he is entitled to the benefit of this sum; in other words, he seeks to realise it from the

tenant in addition to the annual payment of Rs. 500. The contention of the tenant defendant is that he is liable to pay nothing beyond Rs. 500 a year

to his landlord, and that if the Government demand has been remitted in whole or in part, he alone is entitled to the benefit thereof. Upon this sole

question in controversy, the Courts below have adopted divergent views. The Court of first instance upheld the contention of the landlord, while

the District Judge has taken a contrary view on the authority of the decision of the Judicial Committee in Jotindra Mohan Tagore v. Bibi Jarao

Kumari 10 C.W.N. 201 : 33 C. 140 : 33 I.A. 30 : 3 C.L.J. 7 : 1 M.L.T. 8. The answer to the question raised, must, in our opinion, depend upon

the construction of the contract between the parties.

2. It is manifest that the rent reserved under the lease is not Rs. 500 but Rs. 1,580-8-7, which was payable by the tenant to the landlord for use

and occupation of the land comprised in the tenancy. This is plain, not merely from the recitals in the document but also from the schedule where,

although the malikana is made payable in four equal instalments, the sum payable for each instalment is added to the corresponding instalment of

Government demand; and the rent payable for each instalment is shown as the aggregate of the two sums. We start then with the assumption that

the rent payable was Rs. 1,580-8-7, and the whole of this sum, therefore, was the property of the plaintiff. The defendant, as his agent, undertook

to pay out of this sum Rs. 1,080-8-7 to the Collector on account of demands primarily leviable by the State from the landlord. The tenant also

undertook to produce receipts for the payments, which ordinarily would be issued in the name of the zemindar and to make them over to his

landlord. The question, therefore, arises, if the tenant finds it unnecessary to pay a portion of this sum of Rs. 1,080-8-7 because such portion has

been remitted by the State, who is the person entitled to the benefit of such remission? On behalf of the tenant, reliance has been placed mainly

upon three clauses in the lease in support of the contention that the benefit of the remission accrues to him. The first of those provides that if any

new imposts be levied by the Government in the future over and above the jama stated in the kabulyat, the tenant would be liable for the same. The

second Clause is to the effect that save as regards malikana the landlord will not be able to interfere with the patni mahal in any way or to demand

any sum in excess of the fixed jama nor will the tenant be able to make any objection for remission of the jama on any account. The third Clause is

to the effect that save and except malikana the landlord will have no right and interest whatever. It is not disputed that if the first of these clauses

had been bilateral and if it had expressly provided, as is provided very often in leases of this description, that the tenant would not only be liable for

any new impost bat also be entitled to the benefit of any remission, there would have been no room for controversy. But the learned Vakil for the

respondent has contended that although the clause has not been framed in that way, the combined effect of the first and the third clauses is

precisely the same. We are unable, after anxious consideration of the matter, to accept this argument as well founded. The effect of the second and

third clauses is to make it impossible for the landlord to interfere with the tenant in any way, his claim is limited to the malikana. But it is significant

that the malikana is not described as fixed whereas the sum of Rs. 1,580-8-7 is in more places than one described as the fixed jama. In our

opinion, it is fairly clear, upon a consideration of all the clauses in the kabulyat, that the landlord is entitled to the benefit of the remission allowed by

the State.

3. The case of Jotindra Mohan Tagore v. Bibi Jarao Kumari 10 C.W.N. 201 : 33 C. 140 : 33 I.A. 30 : 3 C.L.J. 7 : 1 M.L.T. 8, upon which

reliance has been placed by the learned Judge, is obviously distinguishable. There the sum pay-able to the superior landlord was, as appeared from

the terms of the lease, not regarded as a portion of the rent, It was, consequently, held that it was not recoverable as if it was rent. Nor is the case

of Hemendra hath Mukerjee v. Kumar Nath Roy 9 C.W.N. 96 : 32 C. 169 of any assistance to the respondent, because the terms of the

instrument were materially different from those of the instrument before us. Bat it is needless to review the authorities, commencing with Basanta

Kumari v. Ashutosh Chuckerbutty 27 C. 67: 4 C.W.N. 3, which will be found analysed in Banku Behary Sikdar v. Gopal Chandra Neogy 14

C.L.J. 589 : 10 Ind. Cas. 406. As pointed out in that case, the question whether a particular sum is lawfully payable or deliverable in money or

kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant, must depend upon the true construction of the

contract in each case. In the case before us, there is no room for controversy that the sum claimed was rent; and as there was no express provision

in the instrument that the tenant would have the benefit of the remission of any portion of the Government demands, the landlord is entitled to

recover it.

4. We may add that a preliminary objection was taken that the appeal is incompetent because the sum claimed is not in the nature of rent, and

reference was made to Banku Behari Sikdar v. Gopal Chandra Neogy 14 C.L.J. 589 : 10 Ind. Cas. 406. In the view we take, it is obvious that

the preliminary objection fails. The result is that this appeal is allowed, the decree of the Court below set aside and that of the Court of first

instance restored with costs both here and in the Court of appeal below. The cross-objection necessarily fails and is dismissed.