(1920) 06 CAL CK 0045

Calcutta High Court

Case No: S.A. Nos. 500, 578 of 580 of 1918

Mohini Kanta Saha Chowdhry and others		APPELLANT
	Vs	
Preonath Niyogi and others, Mohesh Chandra Das and others, Sheikh Monaruddi and another and Mohesh Chandra Das and others		RESPONDENT

Date of Decision: June 11, 1920

Final Decision: Dismissed

Judgement

Teunon, J.
These four appeals arises out of proceedings under S. 105 of the Bengal Tenancy Act. These proceedings wore at the instance of the land-lords who sought enhancement of rent mainly on the ground of prevailing rate. On appeal to this Court, the learned special Judge held that the tenants are entitled to the presumption arising under S. 50 (2) of the Act and that the landlords have failed to rebut that presumption.

2. The landlord''s appeal. It appears that in 1305 the original estate in which the plaintiffs were interested was partitioned by the Revenue authorities and inter alia twelve separate estates of which the plaintiffs became sole proprietors were created. For the purposes of the partition, holdings were measured, land classified, and rents assessed in accordance with the classification.

3. The rental values, thus arrived at, far exceeded the preexisting rents and the attempt on the part of the landlord to realise rent at these enhanced rates has been resisted by the tenants.

4. The findings of fact arrived at by the learned Special Judge are as follows:�Prior to the partition (about 17 years before suit) the rents of these tenants were lump rents, not arrived at by assessing rates on different classes of land. The rests

existing for years prior to the partition have been proved by admitted rent receipts and by oral evidence. The holdings are very old, and the evidence disclose no change in the rent at any time prior to the partition. Since the partition where there has been any realization, it has been at the old rates and not at the new rates, demanded by the landlord where there has been no realization this has been due to the landlord''s demand for enhanced rents and reluctance or refusal to receive the old rents or acknowledge the same.

5. On these findings of fact the learned special Judge has held that in the 20 years preceding suit (instituted in. August 1905) there has been no change in the rents at which the tenants have held.

6. He has further observed that if there were a prevailing rate, such rate had not been proved by the evidence adduced in the present case.

7. On appeal it has been contended before us in effect that the presumption under S. 50 (2) of the Bengal Tenancy Act can arise only when by production of receipts or otherwise the tenant has proved actual payment at an unvaried rate if not in each of the 20 years preceding suit, then in so many of those years, as to lead reasonably to the inference that in the rent paid there had been no change throughout the period.

But this is to confound rent actually paid with rent payable. In this case the rent payable and paid in respect of each holding now in question at the beginning of the 20 years period has been proved. Mere demand on the part of the landlord for an enhanced rent and refusal to receive or acknowledge the old rent does not enable him to deprive the tenant of the benefit of the provisions of S. 50. The rent at which a tenancy is held continues until a change has actually been effected such change can be affected only by consent or by proceedings in Court. Here consent has been negatived and no proceedings in Court were taken until the suits out of which these appeals have arisen were instituted.

8. The observation that the prevailing rate if any has not been proved is based on the absence of a majority of the Kabuliyats relied on by the landlords. It appears that since the partition, the landlords have succeeded in obtaining from tenants some 703 or more Kabuliyats. In the present case the landlords exhibited some 200 more Kabuliyats and prayed that from these 200 or more the prevailing rent should be ascertained. To Kabuliyats exhibited in other cases and not in this case they declined to permit reference, and in case of holdings, where no Kabuliyats had been executed did not put before the Court any evidence other than the realization papers which were discredited by the special Judge. In the present appeal, it may be observed, we are informed by both parties, there are no Kabuliyats. The special Judge''s finding that in the case with which we are now concerned, the tenants have held at rents which have not been changed for the 20 years preceding suit, and that the presumption thus arising has not been rebutted, in my opinion should be affirmed to absence of majority of Kabuliyats, and these appeals dismissed with

costs.

Huda, J.

9. In the record-of-rights in these cases the tenants are entered as ordinary occupancy raiyats. They, however, allege in opposition to the record that they are raiyats holding at fixed rents. The onus is on them to show that the entry in the record is incorrect and they rely on the provisions of S. 50 of the Bengal Tenancy Act in support of their claim. They have Dot proved that they have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement. Under the circumstances the rent is Prima facie liable to be increased, but it is argued an behalf of tenants that they have shown that about 17 years ago they paid a certain rent and that there is nothing to show that that rent has since been altered. This contention has prevailed in the Court below.

10. In my opinion the presumption under sub-S. (1) of S. 50 can only arise, when the tenant proves affirmatively that be has held at a rent or rate of rent which has not been changed during the 20 years immediately before the institution of the suit or proceeding. As I read these words they seem to me to place on the tenant the burden of proving either that he has actually paid rent at a uniform rate for 20 years or that if not actually paid, there has been at any rate an agreement between him and his landlord that be should hold at the old rate. Where holding at uniform rate since the time of the Permanent Settlement has not been proved, the landlord has a right to demand in increase and in any case to refuse to receive rent at the old rate in order to prevent the presumption under sub-S. (2) of S. 50 arising against him,. This is what the landlords have done in this case, and I think they were well within their rights in doing so.

11. Upon this view of the case I think the decision of the issue arising under S. 105-A regarding the incidents of the tenancy and its liability to pay enhanced rent has been wrongly decided and to this extent I would modify the decree of the Court below. In other respects I would affirm the decree under appeal.

12. Having regard to the difference of opinion that has arisen in these cases under the provisions of S. 98 of the CPC these appeals are now dismissed with costs.