

(1879) 04 CAL CK 0020

Calcutta High Court

Case No: None

Tekait Chooramun
Singh

APPELLANT

Vs

Dunraj Roy

RESPONDENT

Date of Decision: April 25, 1879

Citation: (1880) ILR (Cal) 56

Hon'ble Judges: Tottenham, J; Mitter, J

Bench: Division Bench

Judgement

Mitter, J.

This is a suit for arrears of rent at an enhanced rate. The rate at which the defendant pays being Rs. 3 per biga, the plaintiff in this action seeks to raise it to Rs. 5.

2. The plaintiff also prays for ejectment of the defendant from the tenure and recovery of damages for non-payment of rent. The Court of first instance decreed the claim in full, but on appeal, that decree has been reversed by the Judicial Commissioner, and the plaintiff's claim dismissed with costs.

3. Concurring with the Assistant Commissioner, the Judicial Commissioner finds that the prevailing rate of rent in the neighbourhood is Rs. 5. Nevertheless he has dismissed the suit, because he is of opinion that the defendant's father excavated a tank in 1842, and constructed an ahir, or reservoir, in 1861, and that the productive powers of the land in suit have been thus increased by the agency and expense of the defendant's father.

4. Furthermore he says,--"Almost all the witnesses for plaintiff, who say that they are now paying Rs. 5 for lands like defendant's, say that they have only been doing so for the last three years; before that the rate was lower, Rs. 2-8, 3, or 4. Such being the case, it seems to me that defendant, having been all along paying at the same rate as those whose lands in no way benefited by their own exertions, cannot be said to have had a reasonable time allowed him for a return of the labour and

capital expended by him on the land, and for this reason I consider the present suit must fail."

5. The judgment of the Judicial Commissioner seems to me to be erroneous. He finds that ryots in the neighbourhood, who derive no especial advantage from the existence of a tank or a reservoir, pay Rs. 5 for lands like defendant's. The defendant, by spending labour and capital, has improved the land, and its productive powers have been increased. The return for that labour and capital will be probably the proportionate increase in the produce of the defendant's land, compared with that derived from the neighbouring lands. But the defendant must pay at the prevailing rate paid by other ryots for similar lands in the neighbourhood, which do not enjoy these especial advantages. The rise in the prevailing rates in respect of these lands is evidently due from natural causes, because they do not possess any advantages of irrigation from any artificial excavation. The defendant's land, therefore, in common with other similar lands in the neighbourhood, must share the liability of paying the higher prevailing rate which is due from natural causes. We are supported in the view we take of this point by the case of *Lukhun Magilla v. Sreeram Chatterjee* (2 H 427).

6. The decision of the lower Appellate Court must, therefore, be set aside; but we cannot restore the decree of the first Court, because this is not a case in which the plaintiff is entitled to a decree for damages and ejectment. There should be a decree in favour of the plaintiff for the principal amount of rent and road-cess claimed, with interest at the rate of 12 per cent. from the beginning of 1285 F. Section to this date, and the aggregate amount thus decreed is to bear interest at 6 per cent. per annum from the date of the decree to the date of payment. The defendant must pay the costs of this suit throughout in all the Courts.