

(1928) 12 CAL CK 0004
In the Calcutta High Court

Abdul Gani Chaudhuri and Another

APPELLANT

Vs

Angri Bhikhu and Others

RESPONDENT

Date of Decision : 18-12-1928

Acts Referred:

Citation : 122 Ind. Cas. 212

Hon'ble Judges : Mallik, J; Arthur Herbert Cuming, J

Bench : Division Bench

Judgement

Arthur Herbert Cuming, J.—In the suit, out of which this appeal has arisen, the plaintiffs sued for recovery of arrears of rent and cesses for the years 1283 and 1284 M, E. and first quarter of 1285 M. E. with damages thereon at 25 per cent. They based their claim on a certain unregistered kabuliyat, They also claim additional rent of Rs. 212-14-0 for the period in suit, on the allegation that there had been an increase in the area of the taluk to the extent of 6 drones 7 kanis 6 1/4 gandas of land. The defendants contended, among other things, that they were not liable to pay any additional rent for any additional area. The first Court decreed the plaintiffs' suit for 2 1/4 years' rent at the rate of Rs. 713 with cesses and with damages at 12 1/2 per cent., but he disallowed the claim for additional rent for additional area. On appeal, the learned District Judge held that the plaintiffs were entitled to additional rent for additional area and that the area on which they were entitled to additional rent was three" drones odd. He assessed the additional rent for this additional area at Rs. 69 per annum.

2. The plaintiffs have appealed to this Court and their first point is that, on a proper construction of the kabuliyat, it will be found that the excess area is some six drones odd and not only three drones odd. They would seem to contend that, on a proper construction of the kabuliyat, the amount of land settled with the defendants, respondents, was some 21 drones and that, as they are now in possession of 28 drones odd, the plaintiffs are entitled to additional rent on additional area, which is the difference between 21 drones odd and 28 drones odd. This question depends on the construction of the kabuliyat so far as we are

concerned. Mr. Chakravarti, who appears for the appellants, would seem to argue, first of all, that what was settled by the terms of the kabuliyat with the defendants, was only the hasila area, which was some 21 drones odd. He contends further that if we find, on construing the kabuliyat, that what was settled with the defendants was the hasila land 21 drones odd together with khila land, which was some 3 drones, still we ought to hold, on a proper construction of the kabuliyat that the rent of Rs. 713 was assessed not on the total land mentioned in the kabuliyat, 24 droves odd, but only assessed on cultivable land. I have very carefully considered the terms of the kabuliyat and I have no hesitation in coming to the conclusion that what was settled with the defendants was the area of 24 drones 10 kanis 2 gandas and 1 kara. If the land settled with the defendants was only the cultivable area of 21 drones 10 kanis and 3 karas, it seems to me, there would be no point in making any mention of the uncultivated lands. The land of which the taluk is comprised is not described as land within certain boundaries. Had the lands been within certain boundaries then there might have been some point in mentioning the facts that some were waste and some were culturable and it was the culturable lands only within these boundaries that were settled with the tenants. But there being no mention of the boundaries, there was obviously no point in making any mention of the unculturable lands, if they were not settled with the defendants. I am clearly, therefore, of opinion that what was settled with the defendants was 24 drones 10 kanis 2 gandas and 1 kara of land. Mr. Chakravarti would then seem to argue that, even if that were so, the rent was assessed only on the cultivated area. There is nothing whatever in the document to show that the rent was assessed only on the cultivated area. If it were, the document would probably have said so and there probably would have been a stipulation in the document that if the khila lands came under cultivation additional rent would be assessed upon them. There is, however, no such stipulation in the document. I am, therefore, of opinion that the learned Judge has rightly held that it is only some 3 drones odd which are now liable to assessment for additional rent. There is a further point to be taken into consideration in connexion with this question, namely, if only culturable lands were assessable under the kabuliyat, there is no evidence as far as I can see, to show how much is culturable land and how much is khila land at the present moment.

3. Mr. Chakravarti has then argued that the lower Courts were wrong in not allowing them a decree for 16 goats and two large jars of molasses, which according to him form part of the rent. The defendants on the other hand, contend that these are abwabs and the plaintiffs are not entitled to realise them. Whether a stipulation such, as this, to pay goats and molasses or other things, is an abwab or forms part of the rent is really a question of fact to be decided in each particular case. In the case of AIR 1927 250 (Privy Council) their Lordships of the Judicial Committee remark: "A large number of cases decided by the Calcutta and Patna High Courts were referred to in the judgments and cited at the bar. Their Lordships do not consider it necessary to refer to them beyond

expressing their agreement in the view that in each case it has to be ascertained whether the sum claimed is really part of the rent agreed upon to be paid as consideration for the lease." If we apply this principle to the present case, I have no hesitation in finding that the goats and molasses do not form any part of the rent. It is quite clear, from a perusal of the document, that the total annual rent is settled to be Rs. 713 and, therefore, it is equally clear that these 16 goats and two big jars of molasses do not form any part of the rent, They cannot, therefore, be recovered by the plaintiffs and they were rightly disallowed by the lower Courts.

4. Mr. Chakravarti then objects to the method, which the learned Judge has adopted, in arriving at what he considered to be fair and equitable rent for the additional land. Mr. Chakravarti would seem to contend that the amount of rent to be assessed on the additional land should bear a proportion to the rent payable on the rest of the land, that is to say, I presume, if the rate of rent of the original land is Rs. 2 per kani, the same rate should be adopted in assessing rent for the additional area. The learned Advocate in his argument is clearly thinking of the rule which applies to the case of abatement of rent which is dealt within a 52, Sub-section (4) of the Bengal Tenancy Act. But the sub-section which sets forth the rule to guide Court in determining the amount of additional rent is Sub-section (3) and not Sub-section (4). As far as I can see, the learned Judge has followed the rule and principle prescribed in Sub-section (3). The rule contained in Sub-section (4), I need hardly say, does not apply to a case of assessment of rent on additional area.

5. The last point argued by the learned Advocate for the appellants is that the appellants are entitled to cesses on the additional rent. Incidentally I may point out that this point was not argued in the lower Court. Nor, as far as I can see, did they claim cesses on the additional rent. They have not, however, yet, as far as I can ascertain, to pay any additional cesses for this additional area for which the additional rent has been assessed. Clearly, therefore, they are not entitled to recover any cesses from the tenants in respect of the additional rent.

6. The result is the appeal must fail and is dismissed with costs.

7. The cross-objection by the respondents is not pressed and is also dismissed with costs.

Mallik, J.

8. I agree.