

(1900) 07 CAL CK 0015
In the Calcutta High Court

Administrator-General of Bengal, Executor to the Estate of the Late Kumar Indra Chunder Singh APPELLANT

Vs

Asraf Ali and Others RESPONDENT

Date of Decision : 13-07-1900

Acts Referred:

Bengal Tenancy Act, 1885 — Section 67
Transfer of Property Act, 1882 — Section 116

Citation : (1901) ILR (Cal) 227

Hon'ble Judges : Brett, J;Ameer Ali, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit brought by the plaintiff to recover from the defendants certain arrears of rent in respect of a holding in their occupation with interest at 75 per cent, per annum. and the only question in the case is whether the plaintiff is entitled to that interest. It appears that one Banu Gazi on the 28th of April 1876, executed in favour of the predecessor of the plaintiff a kabuliat by which he agreed to pay interest at that rate on arrears of rent. Banu Gazi has since died, and the defendants are his heirs. The lease was for six years and the term expired in 1881, since then the defendants have been holding over. The Lower Courts have given the plaintiff interest at the rate of 12 per cent. Hence this appeal. It is contended on behalf of the plaintiff appellant, as was evidently contended in the Courts below, that inasmuch as the original contract was entered into prior to the passing of the Bengal Tenancy Act, the condition relating to interest is untouched by the provisions of that Act; and as the defendants are holding over they must be taken to be holding subject to all the conditions contained in the lease.

2. In support of this contention we have been referred to a number of cases from the Weekly Reporter. In the case of Enayutoollah v. Flahee Buksh (1864) W.R. 1864, Act X, 42 it appeared that a tenant who had been holding under a lease had a part of his land washed away. The lease was alleged to contain a stipulation that the tenant should not have an abatement if any part of his

holding was diluviated. Peacock, C. J., held that the tenant was entitled to abatement unless he was precluded by any express stipulation in the lease giving up the right. With regard to the contention that the lease having expired the tenant was entitled to abatement, he said as follows: "We think when a tenant holds on after the expiration of a lease he does so on the terms of the lease, at the same rent, and on the same stipulations as are mentioned in the lease until the parties come to a fresh settlement. Therefore, if by the kabuliat it was stipulated that there should be no abatement if a part of the land should be washed away, the tenant continued bound by that stipulation, notwithstanding the expiration of the lease."

3. The pleader for the appellant relies on this part of the judgment, but it is clear that the stipulation must be one recognized by law to be binding on the tenant.

4. The case of *Jumant Ali Shah v. Chowdhry Chutturdharee Sahee* (1871) 16 W.R. 185 arose out of a suit brought by the zemindar to eject the defendant on the ground that he had no right of occupancy. One of the pleas raised by the defendant was that, as no legal notice to quit had been given by the landlord, he was not entitled to maintain the action. The learned Judges (Kemp and Glover, JJ.) held that as the defendant had been holding under leases which had expired and on the expiry of the term had been allowed by the plaintiff to hold over and had continued in possession under those leases, there was an implied agreement between the plaintiff and the tenant, and that the tenant was entitled to hold until a legal notice to quit was served upon him.

5. In *Sheo Sahoy Singh v. Bechun Singh* (1874) 22 W.R. 31 the plaintiffs sued the tenant for arrears of rent. Among other objections the defendant contended that as he had been holding a portion of the land under a pottah which had expired it ought to be given effect to in considering what his rent was. Phear, J., held that the opottah was evidence of the rent at which the defendant was holding over in the absence of any evidence to the effect that the rent, had, subsequently to the date of its execution, been altered.

6. In the case of *Tara Chunder Banerjee v. Ameer Mundul* (1874) 22 W.R. 394 it appears that the defendant had consented to pay his rent to the sharers jointly. The plaintiff, one of the sharers, sued the tenant for his share of the rent. The learned Judges (Couch, C.J., and Ainslie, J.) held that, although his lease had expired and he was holding over, that made no difference in his legal position, for he would continue to hold in the same manner as he did under the kabuliat and be liable to pay his rent to the sharers jointly.

7. In *Allah Bibee v. Joogul Mundul* (1876) 25 W.R. 234 the Subordinate Judge had dismissed the plaintiff's suit for rent against a tenant whose lease had expired. In appeal, Glover, J., altered the decree of the Lower Court and in doing so expressed himself thus: "It must be presumed, where a person holds over in this way, that he holds for succeeding years upon the same terms that he held in the first year of this term. There is no allegation in this case that the defendant is

in the position of a trespasser. It is not denied that he is still holding possession of the land under the plaintiff; his possession therefore is not adverse to him. Therefore, whether you call it rent or money for use and occupation of the land the plaintiff is equally entitled, it seems to me, to recover."

8. It will be noticed that in none of the above cases was the question now before us raised or decided.

9. The case of *Alim v. Satis Chandra Chaturdhuri* I.L.R (1896). 24 Cal 37 is more important. In that case a tenure was put up to sale for arrears of rent against a tenant whose lease had expired in 1884 and was purchased by the defendant. The plaintiff afterwards sued the defendant for interest at the rate specified in the lease of the defaulting tenant. The learned Judges (Macpherson and Hill, JJ.) held that the condition relating to interest was not an ordinary incident of the holding and did not attach to the land after the lease had expired, and the holding by the act of the landlord had passed into other hands, and that therefore the defendant was not liable for the interest claimed. As the full significance of the language used by the learned Judges in that case does not seem to have been kept in view in the discussion of the present case, we will give the exact words: "We will assume, in the absence of anything to denote the contrary, that the original holder, while holding over, held under all the terms of the *kabuliat* which he had given. When, however, the landlord put up the holding to sale for its arrears he must be taken to have put it up subject to all the ordinary incidents of such a holding. It was not an ordinary incident that interest on arrears should be payable at the very high rate claimed. On the contrary, there was no such incident, and if the landlord had put up the holding, subject to an express condition that the higher rate should be paid, the condition would not bind the purchaser in so far as it purported to create a new contract between himself and the landlord. If there was no such condition attached to the sale, the purchaser must be taken to have purchased subject to all the ordinary incidents of the holding. If there was such a condition, and it was for the respondent to show it, which he has not done, the condition was, we consider, contrary to the provisions of the Act and not binding on the purchaser. An agreement by a tenant of a holding for a term, to pay interest at a certain rate may, if made before the passing of the Act, bind him so long as he continues to hold, but it does not attach to the land, when the term has expired, and the holding by the act of the landlord passes into other hands; and if the landlord, after the expiry of the term, puts up the holding to sale under the Act, he puts it up subject to the express provisions of the Act in connection with it." But it is said that in *Alim v. Satis Chandra Chaturdhuri* I.L.R (1896) . 24 Cal. 37 the defendant was a purchaser at an auction-sale, which fact distinguishes it from the present case. The underlying principle, however, is the same, viz... whether a condition relating to interest is an ordinary incident of the tenancy which would remain attached to it, even after the expiration of the lease and when the tenant is merely holding over from year to year.

10. In the case of *Kishore Lal Dey v. The Administrator-General of Bengal* 2C.W.N. 303 it has undoubtedly been held upon the authority of the case in the Weekly Reporter to which we have already referred that the condition relating to interest is binding in a tenant holding over. This case does not seem to have been followed in *Ali Mamud Pramanick v. Bhagabati Debya Chowdhurani* 2 C.W.N. 525 where a similar question came up for determination. In the latter case it was held by Rampini and Henderson, JJ., that where a tenant was holding over on the expiration of a lease which had been executed before the passing of the Tenancy Act, but which expired after it came into force the landlord was not entitled to interest beyond that provided by Section 67 of the Act. A distinction was drawn between that case and that of *Kishore Lal Dey v. The Administrator-General of Bengal* on the ground that the lease had expired after the Tenancy Act came into operation, but that fact does not appear to us to affect the general principle. We are not sure if we apprehend exactly the judgment in *Kishore Lal Dey v. The Administrator-General of Bengal* regarding the character of the tenancy when a tenant holds over after the expiration of his lease. The learned Judges on this point observed as follows: "So far as we are aware, there is no general rule of law to the effect that the lease of an agricultural tenant in this country, who holds over, must be taken as renewed from year to year. The provisions of Section 116 of the Transfer of Property Act are by Section 117 expressly restricted to leases other than agricultural leases. It would seem that a tenant, who holds over with the consent of the landlord, does so upon the same conditions as those set out in his time-expired lease, and that, if any contract is to be implied, as contended for on behalf of the appellants, it should be taken to have been entered into so soon as the term of the lease expired rather than at the beginning of each year. The term of the kabuliat in this case expired some years before the Bengal Tenancy Act came into force; and it therefore follows that the defendants are liable under that contract to pay interest on arrears of rent at the rate stipulated in the kabiats of 1283 B. S." If this means that the implied contract is for the same term of years as in the lease (of course it could not be for an indefinite period), we venture to think the correctness of the dictum is open to question. We consider that when an agricultural tenant holds over, his tenancy is from year to year.

11. We are not aware of any case in which it has been held otherwise. and the text in *Woodfall* (1) is clear on the subject. If this view be correct, viz., that after the expiry of the lease the tenancy is impliedly renewed from year to year, it is clear that after the Act once came into force, the implied contract relating to interest, assuming that interest is, to use Mr. Justice Macpherson's expression, "an ordinary incident of the holding," will not be valid with regard to any interest claimed to have accrued due after 1885. Section 67 of the Tenancy Act provides as follows: "An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the installment falls due to the institution of the suit." and Section 178, Sub-section 3, Clause (h), declares "nothing in any contract made between a

landlord and a tenant after the passing of this Act shall affect the provisions of Section 67 relating to interest payable on arrears of rent."

12. Supposing the contract was expressly renewed after the passing of the Act and the stipulation as to interest was embodied in a new lease, the tenant would not be bound by it and the stipulation would not be enforceable under the law. It would be anomalous to hold that what cannot be done by a lease may be done by allowing the tenant simply to hold over.

13. It is unnecessary, however, to decide in this case whether the contract implied from the holding over is from year to year or not, for assuming it "should be taken to have been entered into so soon as the term of the lease expired rather than at the beginning of each year," and that this contract is for the same term as in the lease, even then, in our opinion, the present claim for interest beyond that allowed by Section 67 would not be maintainable. For the term of six years under "the implied contract" would end in 1886, whilst the Tenancy Act came into force in March 1885. The fresh contract implied by the fresh holding over, according to the learned Judges in *Kishore Lal Dey v. The Administrator General of Bengal* would begin from 1886, when the Tenancy Act was in operation, and must necessarily be subject to and governed by the provisions and restrictions of the Tenancy Act. In the present case the interest claimed is for the years 1893, 1894, 1895 and part of 1896. In *Kishore Lal Dey v. The Administrator-General of Bengal* the claim was for the years 1298--1301 and we do not know when the successive implied contracts there began or came to an end.

14. For these reasons we are of opinion that the view taken by the Courts below is correct and that this appeal ought to be dismissed, and we accordingly dismiss it with costs.