

(1921) 08 CAL CK 0036
In the Calcutta High Court

Amarnath Bhattacharjee and Others

APPELLANT

Vs

Hon"ble Raja Hrishikesh Laha and Others

RESPONDENT

Date of Decision : 10-08-1921

Acts Referred:

Citation : 64 Ind. Cas. 829

Hon'ble Judges : Panton, J;Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the tenants in a proceeding under Chapter X of the Bengal Tenancy Act for assessment of fair and equitable rent. The substantial question in controversy between the parties is whether the disputed land is held at a rent fixed in perpetuity The Court's below have answered this question in favour of the landlords.

2. The status of the appellants must be determined by referenda to the contract of tenancy, which is embodied in a lease granted on the 27th December 1886. This document recites that on the 4th December 1863, a lease had been granted to the tenants in respect of 32 bighas 12 cottas and 8 chittaks of land at a rental of 2 annas per bigha, that the aggregate rent was Rs. 4 annas 5 per year, that in 1879 the village was surveyed by the landlord, with the result that the tenants were found in occupation of an area of 83 bighas 1 cotta and 13 chittaks, and that thereupon the additional area of 50 bighas 14 cottas 5 chittaks was assessed at Rs. 6 5 annas 10 gundas at the rate of 2 annas per bigha. The aggregate rent payable on the date of the contract in respect of 83 bighas 1 cotta and 13 chittaks was thus fixed at Rs. 10-6-5 gundas, payable in twelve instalments specified in the schedule. The document further stated that the landlords could at their choice make a survey at any time and that if on measurement the tenants were found to be in occupation of a larger area than the area previously specified, they would be liable to pay rent for the excess at the rate specified, namely, 2 annas per bigha. There were two other provisions in the document which throw light on the question now under consideration. In the

first place, it was stated that if any additional sum were levied by the Grown, the tenants would pay a proportionate amount thereof. In the second place, it was provided that the tenants would be in occupation from generation to generation, though they would not be entitled to transfer the land without the permission of the landlords. We are of opinion that the tenancy thus, created was not only permanent and heritable but was also held at a fixed rate of rent. The significant facts cannot be overlooked that the rent was fixed at the rate of 2 annas per bigha in 1866, that on the discovery of additional lands in the possession of the defendants the excess area was assessed at 2 annas per bigha in 1881, and finally, that it was moreover provided that if thereafter at any period further excess lands were discovered in the possession of the tenants, the excess area would be liable to be assessed at the rate of two annas per bigha. In our opinion, one inference only can be drawn from these circumstances, namely, that the rent was fixed in perpetuity at 2 annas per bigha. The view we take is in conformity with the principle explained by the Judicial Committee in a series of cases reviewed in the judgments of this Court in *Robert Watson & Co. v. Radha Nath Singh* 1 C.L.J. 572 and *Katyayani Debt v. Port Canning and Land Improvement Company Limited* 25 Ind. Can. 274 : 19 C.W.N 56; the decision in the case last mentioned has been affirmed by the Judicial Committee; *Port Canning and Land Improvement Co. v. Katyani Debi* 53 Ind. Cas. 522 : 46 I.A. 279 : 37 M.L.J. 578 : 17 A.L.J. 1061 : I.U.P.L.R. (P.C.) 91 : (1920) M.W.N. 160 : 24 C.W.N. 369 : 11 L.W. 296 : 47 C. 280 : 22 Bom. L.R. 437 : 32 C.L.J. 1 : 27 M. L.T. 195 (P.C.).

3. The result is that this appeal is allowed, the decree of the Special Judge set aside and the application for enhancement of rent dismissed with costs in all Courts.