

(1921) 07 PAT CK 0037
In the Patna High Court

Babu Sukhraj Rai

APPELLANT

Vs

Ganga Dayal Singh and Others

RESPONDENT

Date of Decision : 23-07-1921

Acts Referred:

Bengal Tenancy Act, 1885 — Section 38, 52(1)(6)

Citation : AIR 1922 Patna 169 : 63 Ind. Cas. 219

Hon'ble Judges : Jwala Prasad, C.J; Ross, J

Bench : Division Bench

Judgement

Jwala Prasad, C.J.—This appeal arises out of a suit to recover rent for the years 1321 to 1324. The Courts below disallowed the plaintiff's claim for the years 1822 to 1324, on the ground that the land was under water and not fit for cultivation.

2. The plaintiff has, therefore, come to this Court in second appeal and contends that he is entitled to rent for the year 1324. upon the finding of the Court below. That finding is that the land was washed away in the years 1322 and 1323 and re appeared in 1324. Mr. Manuk contends that as the land reappeared in 1324, his client was entitled to rent for that year inasmuch as there was no diminution in the area of the holding u/s 52(1)(6) of the Bengal Tenancy Act, under which alone the defendant is entitled to raise a plea of abatement in a suit for rent. He concedes, however, that such a question might be raised by the tenant in a suit properly instituted by him u/s 38 of the Bengal Tenancy Act. He refers to Section 18 of Act X of 1899 for the purpose of his contention that although it was permissible under the old law for a tenant to raise the plea of his non-liability on the ground of a permanent deterioration of the land, it is not so under the present law. That section runs as follows: "Every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by dilution or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot, or if the quantity of land held by the ryot

has been proved by measurement to be less than the quantity for which rent has been previously paid by him."

3. The provisions of that section have been split up into two portions in the present Rent Law of 1885, viz, sections 38 and 52(1)(6). Section 38(1) says that an occupancy raiyat holding at a money rent may institute a suit for the reduction of his rent on the grounds set forth in that section, one of the grounds being that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual. Section 52(1)(b) says that a tenant shall be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid, by him. Mr. Manuk contends that in case of the submersion of land under water the tenant is entitled in a suit for rent to take the plea u/s 52(1)(b) that his rent should be abated on account of the deficiency of the area originally held by him, but he says that when the land is not under water but, as in the present case, has re-appeared and is covered with sand; and other deposits rendering it unfit for cultivation, such a plea of the tenant is not available u/s 52(1)(b) but can only be entertained in suit brought u/s 38.

4. The argument seems to me to be fallacious. A tenant is entitled to institute a suit whether his case comes u/s 52 or u/s 38. Whatever be the reason for splitting up the provisions of Section 18 of the old Act into two sections in the present law, it is obvious that the arrangement in the present law has been most convenient. Section 52 deals with the alteration of rent on alteration of area and it entitles both the landlord and the tenant to apply under that section for the alteration of the rent, the landlord on account of an increase in the area and the tenant on account of a decrease in the same. Section 38, to my mind, was not set apart in the present law to, in any way, take away the right that the tenant possessed under the old law. That section only enables the tenant to institute a suit for the reduction of his rent on the ground of permanent deterioration, etc., but does not go far enough to say that the tenant shall not be entitled to claim a reduction of rent on the ground of permanent deterioration otherwise than by a suit. Section 18 of the old law also did not in any way affect the right of the tenant to claim abatement, of rent on the grounds mentioned therein. Both the present and the old law seem to recognise the undoubted right of a tenant to claim abatement of rent when he is prevented from using the land from causes beyond his control. Section 38 refers only to occupancy tenants, but the right to claim abatement in the circumstances mentioned in that section exists in all tenants irrespective of their status. The case of *Sheik Enayutoollah v. Sheik Elaheebuksh W.R.* 1864 Act X Rule 42 recognised this principle and also held that the right is based upon natural justice and Equity, a right which was enunciated under the rule laid down in *Bacon's Abridgment*, 7th Edition, Volume VII, at page 63 under the title "Rent," quoted in the decision of Sir Barnes Peacock, C.J. It is well to quote in extenso here that rule:

In this place we are to consider whether the tenant shall pay the whole rent, though part of the thing demised be lost, and of no profit to him, or though the use of the whole be for some time intercepted, or taken away without his default; and here it seems extremely reasonable, that, if the use of the thing be entirely lost or taken away from the tenant, the rent ought to be abated or apportioned, because the title to the rent is founded upon this presumption, that the tenant enjoys the thing during the contract; and, therefore, if part of the land be surrounded or covered with the sea, this being the act of God, the tenant shall not suffer by it, because the tenant, without his default, wants the enjoyment of part, of the thing, which was the consideration of paying the rent, nor has the lessee reason to complain, because, if the land had been in his own hands, he must have lost the benefit of so much as the sea has covered."

5. This view was also expressed by Sir Barnes Peacock, C.J., in the earlier case of *Afsuroodeen v. Shoroosheebala Dabee Marsh*. 558 : 2 Hay 664. There that learned Judge says: "If a man stipulates to pay rent, it is clear that he engages to pay it as compensation for the use of the land rented; and, independently of section 18, Act X of 1859, we are of opinion that, according to the ordinary rules of law, if a talukdar agrees to pay a certain amount of rent, the tenant of it is exempt from the payment of the whole rent if the whole of the land be washed away, or of a portion of the rent if a portion only be washed away. According to English law, a tenant is entitled to abatement in proportion to the quantity of land washed away, and he is entitled to that abatement in a suit brought by the landlord for arrears of rent."

6. This observation is a direct reply to the contention of Mr. Manuk. The plea, therefore, can be taken in a suit for recovery of rent and it is not essentially necessary that the tenant should himself institute a suit for the abatement of his rent. The aforesaid view finds support in the case of *Rajendra Kumar Roy v. Maharaja Manindra Chandra Nandy* 34 Ind. Cas. 464 : 24 C.L.J. 162. Reference may also be made to the cases of *Maharajah Dheraj Mahtab Chani Bahadoor v. Chittro Coomaree Bibee* 16 W.R. 201 and *Gouri Pattra v. H.R. Reily* 20 C. 579 : 10 Ind. Dec. 392.

7. Mr. Manuk then contended that a plea of this kind should not be allowed to be raised in a simple suit for arrears of rent. As to this kind of plea Sir Romesh Chunder Mitter in the case of *Gour Kishore Chunder v. Bonomalee Chowdhry* 22 W.R. 117 observed: "I do not think this contention is valid. A plea of abatement can be adjudicated upon in a suit for arrears of rent with as much facility as in a suit for abatement of rent." I, therefore, overrule this contention of Mr. Manuk's that it was not open to the defendant to take the plea of abatement in the present case so far as the rent for 1824 is concerned, the finding of the Court below being that in that year the land "was totally unfit for cultivation." The appellant is not entitled, therefore, to the rent for the year 1824 also. The appeal is consequently dismissed with costs.

Ross, J.

8. I agree.