
(1921) 04 CAL CK 0021
In the Calcutta High Court

Bamandas Bidyasagar Bhattacharya

APPELLANT

Vs

Sadhu Majhi and Others

RESPONDENT

Date of Decision : 22-04-1921

Acts Referred:

Bengal Tenancy Act, 1885 — Section 50

Citation : 64 Ind. Cas. 445

Hon'ble Judges : Panton, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for recovery of arrears of rent. The plaintiff also claimed additional rent for additional lands found in the tenant's possession and also enhanced rent for rise in the price of staple food crops.

2. It appears that originally there were two holdings, one consisting of 5 bighas 1 3/4 cottas at a jama of Rs. 6.5 9 and Re. 1-12-9 was reserved as hajat. There was another holding of 5 bighas 3/4 cottas at a jama of Rs. 6.2.3 and Rs. 2 1-0 was kept as hajat. The total area of the two holdings was 10 bighas 2 1/2 cottas and the jama was Rs. 12-8. The plaintiff's case was that out of the total hajat of these two jamas, namely, Rs. 3-13-9, a sum of Rs. 1-15 was made a part of the current rent and the jamas became Rs. 14-7-0 by the amalgamation of the two, jamas, taken with Re. 1-150 on account of the hajat, and that there has been an increase in the area of 4 bighas 4 1/2 cottas. The plaintiff contended that they were entitled to the full hajat rent and additional rent for the additional area at the rate of Re, 1-9-7, which would be the rate if the entire hajat jama were added to the rent.

3. The Court of first instance gave a decree to the effect that the plaintiff was entitled to the full hajat jama, so that he was entitled to the full rent of Rs. 16-5-9 and additional rent for the additional area at Re. 1-9-7 per bigha from 1321 to 1324. That Court also allowed enhancement at annas 2 per rupee from 1326.

4. On appeal the lower Appellate Court held that *hajat jama* could not be recovered, as it is an amount held in *terrorem* over the tenant and that the rent recoverable, therefore, was at the rate of Rs. 12 8. The additional rent accordingly was allowed at the rate of Rs. 1 3-9. The learned Judge was of opinion that there was a presumption u/s 50 of the Bengal Tenancy Act arising from the payment of rent at a uniform rate for 29 years preceding the institution of the suit. He accordingly disallowed the claim for enhancement of rent.

5. Two questions arise for our determination in this appeal. The first is whether any presumption arises u/s 50 of the Bengal Tenancy Act in the circumstances of the present case.

6. Now, it appears that there was a Record of Rights and in the Record of Rights, the tenant was shown as an occupancy raiyat and not a raiyat at fixed rate, Section 115 of the Bengal Tenancy Act lays down that when the particulars mentioned in Section 102, Clause (6), have been recorded under Chapter X in respect of any tenancy, the presumption u/s 50 shall not thereafter apply to that tenancy. There is no question in this case that the Record of Rights is final and that the defendant is entered therein as only an occupancy raiyat. That being so, we think, having regard to the terms of Section 115 and the decided cases on the point, that there is no presumption after the publication of the Record of Rights in respect of the tenancy. The tenant is debarred by the provisions of Section 115 from claiming the presumption u/s 50 of the same Act.

6. In the case of *Pirithi Chand Lal Chowdhury v. Basarat Ali* 3 Ind. Cas. 449 : 37 C. 30 : 13 C. W.N. 1149 : 10 C.L.J. 343 the question arose when an application was made u/s 105. It was held that the presumption did arise u/s 50 of the Bengal Tenancy Act. The Full Bench, however, had to consider the meaning of the word " thereafter" contained in Section 115, having regard to the decisions in the case of the *Secretary of State for India v. Kajimuddi* 26 C. 617 : 13 Ind. Dec. 997 and the case of *Maharaja Radha Kishore Manikya Bahadur v. Umed Ali* 12 C.W.N. 904, The learned Judges were of opinion that the decision in the former case disregarded the plain terms of the section which are general in expression, and contain nothing to justify the limited construction that had been placed on them. It has been held in a series of cases that after the publication of the Record of Rights in respect of a tenancy under Chapter X, the tenant is precluded by Section 115 from claiming the presumption u/s 50 of the Act [see *Murli Dhar Aditya v. Radha Mohan Ratra* 51 Ind. Cas. 652, *Jagdeo Narain Singh v. Bhagwan Mahto* 51 Ind. Cas. 672 : 1 P.L.T. 27, *Harihar Persad Bajpai v. Ajub Missir* 22 Ind. Cas. 604 : 45 C. 930, *Janki Kuer v. Hiranand Pande* 58 Ind. Cas. 25 and an unreported case Second Appeal No. 2319 of 1919) decided by Teunon, J. on the 6th January 1921]. We are accordingly of opinion that the defendant is not entitled to the presumption u/s 50 of the Bengal Tenancy Act.

7. The next question is whether the plaintiff is entitled to the rent reserved as *hajat*.

8. It is contended that a portion of the hajat rent was converted into the current rent two years after the execution of the kabuliyat. The learned Subordinate Judge, however, has found that "there is no evidence on the record to support the contention. It might as well have been for addition of some lands to the tenancy. The learned Munsif's finding that this alteration of rent in 1293 was on account of conversion of a portion of the hajat rent to current rent is not supported by evidence and is based on the mere statement in the plaint."

9. It does not appear for what period the rent was kept as hajat nor the circumstances under which and the date from which, the hajat was to be recovered from the tenant. In the circumstances, we are unable to hold that the plaintiff is entitled to the hajat as part of the rent. That being so, we cannot interfere with the rate of rent allowed by the Court of Appeal below with regard to the additional area.

10. The result is that the decree of the Court of first instance so far as it allows an enhancement at the rate of 2 annas in the rupee will be restored and the decree of the lower Appellate Court to that extent will be set aside, Otherwise, the decree of the lower Appellate Court will stand.

11. The plaintiff will get two-thirds of the costs incurred by him in the lower Courts. We make no order as to costs in this Court.