

(1921) 03 CAL CK 0035
In the Calcutta High Court

Basiruddin Sarkar

APPELLANT

Vs

Jogendra Mohan Das and Others

RESPONDENT

Date of Decision : 21-03-1921

Acts Referred:

Citation : 64 Ind. Cas. 182

Hon'ble Judges : Walmsley, J

Bench : Single Bench

Judgement

Walmsley, J.—The defendant prefers this appeal against a decision by which his rent has been enhanced to the extent of about 35 per cent.

2. Two points are raised. The first affects his claim which has been rejected that his rent is not liable to alteration. The lower Courts have found that prior to 1300, the rent payable by the defendant was Rs. 16 and in or about 300, it was raised to Rs. 18, Such a finding of fact, of course, destroys the presumption which the defendant would have us draw from a long uniform payment. But the form in which the point is pressed now is this: in the plaint, it is said, the plaintiff stated the original rent to be Rs. 18 and the finding of a variation about 1300 B.S. is inconsistent with that statement. Now, I think the explanation given of this is quite sufficient, namely, that before the year 1300, the estate in which this holding is situated was in the hands of a Receiver and that shortly before 1300 it went back to the hands of the proprietor: so when the plaintiff says in the first paragraph of his plaint that the settlement made with the defendant was at the rate of Rs. 18 per annum, I do not think that it can be said that he contradicts the case made later in Court that prior to 1300 the rent had been Rs. 16 and in or about 1300 it was raised to Rs. 18. As I regard this explanation as satisfactory, I cannot accept the contention advanced on behalf of the appellant that the evidence adduced on behalf of the plaintiff to show the variation of rent is inadmissible as being contradictory to the allegation made in his plaint.

3. The second, point raised by the appellant is that out of the 12 bighas forming the jote 9 bighas have been sub-let and consequently the enhancement on the

whole area falls heavily on the defendant. It is quite true that in paragraph No. 2 of his written statement he did make the allegation that 9 bighas were sublet. When the case came on for trial, however, it does not appear that he pressed this point in any way, I understand that he gave evidence about the sub-letting; but it was not urged on his behalf that on that amount there should not be an enhancement or that the enhancement should be held in abeyance until the termination of this sublease. It does not appear that in the lower Appellate Court this argument was pressed and I do not think I ought to entertain it now, I may add that the learned Vakil who has appeared for the appellant has been unable to show me any authority for holding that the mere fact that an occupancy raiyat has sub-let part of his holding is a sufficient reason for refusing his landlord an enhancement under the provisions of the Act.

4. In my opinion the appeal fails and it must be dismissed with costs.