

(1930) 03 CAL CK 0038
In the Calcutta High Court

Benod Kumar Roy Chowdhury and Others	APPELLANT
Vs	
Ganga Charan Mestari and Others	RESPONDENT

Date of Decision : 11-03-1930

Acts Referred:

Bengal Tenancy Act, 1885 — Section 30(b), 52

Citation : AIR 1930 Cal 595

Judgement

1. This appeal arises out of a suit brought by the plaintiff landlord for enhancement of rent under Sections 30(b) and 52, Ben. Ten. Act. The tenancy covered by khatian 34 mouzah Debidaskuthi consists of nine entire plots and an undivided 10 annas eight pies" share of another plot, the five annas four pies" share of which appertains to a different khatian. Both the Courts below have held that the tenancy in the present case is not a holding and therefore its rent cannot be enhanced either u/s 30(b) or Section 52, Ben. Ten. Act. It is conceded before us that the view of the Courts below in 30 far as it relates to Section 30(b), cannot be assailed inasmuch as that section speaks of a holding; and a holding as defined in the Act before its recent amendment did not include an undivided share in a plot. But it is argued that Section 52 does not necessarily refer to a holding and that the rent of a tenancy even if it consists of an undivided share of a plot may be brought under that section. This argument also must fail. Section 52 speaks of additional rent or of reduction of rent in respect of a particular area for which rent has been previously paid and it says that additional rent is to be paid if it is proved that such excess is due to the addition to the tenure or holding for which rent was not being previously paid. The word "area" in that section clearly indicates a definite quantity of land. A share in a plot cannot be brought within the significance of that word; and the subsequent use of "tenure" or "holding" shows that the legislature had in contemplation an entire plot of land within definite boundaries and not an undivided share. The enhancement u/s 52 can accordingly be claimed only where it is found that the land in the possession of the tenant is in excess of a definite quantity of land for which he was paying rent previously. This view is supported by the decision of

the Patna High Court in the case of Harnandan Rai v. Kesho Prosad Singh 40 Ind.Cas. 585 the judgment of which is to be found in (1) the facts of which are exactly similar to the present case. I do not wish to lay down in this case that a tenure within the meaning of Section 52 may not be composed of undivided shares though the word "area" used in the section suggests the view. The tenancy involved in the present suit is a holding and I have no doubt in my mind that a holding cannot be composed of an undivided share and that Section 52 does not apply to a tenancy composed of some definite plots and an undivided share in another plot. Some difficulty is felt in construing Section 52 along with Section 105 Ben. Ten. Act. In Section 105 the word used is "land" and it has sometimes been interpreted as including an undivided share in a plot. The landlord may claim u/s 105 enhancement or settlement of fair and equitable rent u/s 52 but it seems that if the tenancy in respect of which additional rent is claimed u/s 52 is composed of an undivided share the claim will not be admitted u/s 105 also.

2. It is next argued that the present suit is based not upon Section 52 alone but upon the contract between the parties. It is said that in the kabuliyat executed by the defendants in favour of the 10 annas cosharer landlords they agreed to pay additional rent if in future the lands in their possession were found to be in excess of what were mentioned in the kabuliyats. The kabuliyat has not been placed before us and we do not know its exact terms. But the present suit is by the 16 annas landlord. So far as the 6 annas landlords are concerned, there is no contract between them and the defendants and therefore as has been rightly observed by the trial Court the case must fall under 52, Ben. Ten. Act. The learned advocate for the appellants argues that if a tenant enters into a contract like the present with a cosharer landlord, the other eosharers have the right to take advantage of it and may sue for enhancement on that basis of that kabuliyat though it was not executed in their favour. In support of this contention, which on the face of it seems to be illogical, he relies upon the decision in the case of Gobind Chandra Pal v. Hamidulla Bhuian 7 C.W.N. 670. The facts of that case were peculiar. The tenant executed a kabuliyat in favour of 5 annas cosharer landlord in respect of not his share in the holding, but of; a definite quantity of land representing his share and he stipulated that if the land in his possession was found to be in excess of the quantity mentioned in the kabuliyat as representing his share, the tenant would be liable to additional, rent. A suit was brought by the landlord in whose favour the kabuliyat was executed. The learned Judges forming the Bench, who heard the appeal, originally differed in opinion, one of them being of opinion that in spite of the contract such a suit would not lie u/s 188, Ben. Ten. Act; the other learned Judge was of opinion that the suit as based upon the contract between the parties was rightly constituted. The matter came up before Prinsep, J. as the third Judge and that learned Judge held that the matter was outside the scope of the Bengal Tenancy Act altogether and came within the domain of the law of contract. That case accordingly has no bearing upon the question which we are asked to consider in this case. The result

is that we agree with the view taken by the-Courts below and dismiss the appeal; with costs.