

(1926) 02 CAL CK 0037
In the Calcutta High Court

Birendra Kishore Manikya Bahadur

APPELLANT

Vs

Bhola Mia Majumdar and Others

RESPONDENT

Date of Decision : 09-02-1926

Acts Referred:

Bengal Tenancy Act, 1885 — Section 30, 52, 7

Citation : AIR 1927 Cal 15

Hon'ble Judges : Panton, J;B.B. Ghose, J

Bench : Full Bench

Judgement

B.B. Ghose, J.—This appeal arises out of a suit for recovery of arrears of rent for the years 1920 to 1922 at the rate of Rs. 22-8-0 per year with cesses and damages and also for enhancement of rent under Sections 7, 52 and 30 of the Bengal Tenancy Act. The plea of the defendants was that they held the land in mokurari mourasi interest, no kabuliyat had been executed by their predecessor as alleged by the plaintiff and that some of the lands alleged by the plaintiff as within the tenure were their lakheraj lands. The Munsif found that the lands held by the defendants constituted a tenure and that the defendants' predecessor had executed a kabuliyat in favour of the plaintiff's predecessor for some time in 1853. Then he found that under the terms of the kabuliyat the rent is liable to enhancement and upon the evidence he enhanced the rent by certain amount which it is not necessary now to state. The defendants appealed against the decision of the Munsif and the Additional District Judge of Noakhali has reversed the decision of the Munsif with regard to the right of the plaintiff to enhancement of rent. Before the District Judge it appears to have been contended on behalf of the defendants that under the terms of the kabuliyat they are not liable to pay enhanced rent for the increase of area because it is stipulated in the kabuliyat that the rent of Rs. 22-8-0 should be paid for the tenure until a Permanent Settlement is made by measuring the land and as no Permanent Settlement has been made the landlord is not entitled to any increase of rent for increase of area. This was accepted by the Judge. The second ground on which the learned Judge has reversed the Munsif's decision on this point is that there was no proof

of the standard of measurement adopted at the time of letting out the disputed land. With regard to the first point, we are of opinion that the construction put upon the kabuliyat, which, it may be stated in passing was not the point raised in the trial Court by the defendants that the landlord is not entitled to increase of rent unless and until he offers a Permanent Settlement to the tenants is not correct. The kabuliyat stipulates that there should be measurement of the land before a Permanent Settlement is made. But there is nothing to show that if the tenant is found to be in possession of an increased area, the landlord will not be entitled to ask for increase of rent for increase of area. The first ground, therefore, found in favour of the defendants, is not maintainable.

2. With regard to the question of standard of measurement the presumption must be that the standard of measurement at the time of letting out was the same as it is now unless anything to the contrary is proved. As there is no proof to the contrary it must be presumed that the same standard has continued. It is not a case of letting out a piece of land within specified boundaries. But it is a case of letting out by a statement of the area, and if the area found to be in excess of what was let out the landlord is evidently entitled to increase of rent for such increase of area.

3. The judgment and decree of the lower appellate Court disallowing the claim for enhancement of rent and for additional rent for excess area are, therefore, set aside and the case is sent back to that Court for the decision of the question of the amount of enhancement which the landlord is entitled to on the evidence upon the record.

4. Costs of this appeal will abide the result.

Panton, J.

5. I agree.