

(1916) 06 CAL CK 0001
In the Calcutta High Court

Chandra Kanta Chakrabartty

APPELLANT

Vs

Ram Krishna Mahalnabis

RESPONDENT

Date of Decision : 01-06-1916

Acts Referred:

Citation : 36 Ind. Cas. 707

Hon'ble Judges : Lancelot Sanderson, C.J.; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—In this case I think that the appeal should be dismissed. The whole question, in my opinion, turns upon the construction of the sanad, which is to be found at page 19 of the paper-book. If by that, a part of the taluk which was existing at the date of the Permanent Settlement was assigned to the defendant's predecessor, then the plaintiff had no case. On the other hand, if there was a new tenure created at a new rate of rent, different from that which was applicable to the taluk which was existing before that date, then the plaintiff had some case for consideration.

2. The question depends upon Section 6 of the Bengal Tenancy Act, which says that where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof of certain matters mentioned in that section.

3. Now, looking at that sanad, it seems to me that there had been before the date of it a taluk in a certain village the rent of which was Rs. 105-15-1 price, in respect of certain lands which in themselves had been carved out of a larger tenure, the word used being taksim jama. Then by this transaction it appears that the talukdars of that particular village had assigned a portion of the taluki right to the defendant's predecessor, and they assigned it subject to the confirmation by the superior landlord. That confirmation was given by the document which is now before us. It recites that the talukdars assigned a part of their taluk and at a particular rate of rent which, in my opinion, must be assumed to be the same rate at which the larger taluk had been held by the

talukdar Therefore, in my judgment the learned Judge of this Court and the learned Judge of the first Appellate Court were right in holding that there was no new tenure created but that there was an assignment of part of the old tenure, and, therefore, this tenure was one that had been held from the time of the Permanent Settlement.

4. Then it is said that the plaintiffs can rely upon Sub-section (b) of Section 6 of the Bengal Tenancy Act, because, they say, the tenure-holder has received a reduction of his rent. Upon that point I agree with what is said by Mr. Justice Digambar Chatterjee and I do not think it necessary to add anything further to what he has said.

5. For these reasons I think the appeal should be dismissed with costs.

Mookerjee, J.

6. I agree that the judgment of Mr. Justice Digambar Chatterjee, which affirms the concurrent decisions of the Courts below, takes a correct view of the rights of the parties and cannot be successfully assailed.

7. The plaintiff seeks to enhance the rent of a tenure held by the defendant under him. The defendant pleads that his tenure has been in existence from the time of the Permanent Settlement, and its rent is consequently not liable to enhancement, as neither of the contingencies mentioned in Clauses (a) and (6) of Section 6 of the Bengal Tenancy Act has admittedly happened. The question for decision, accordingly, is, whether this tenure has been held from the time of the Permanent Settlement.

8. Now it is not disputed that in 1793 a tenure bearing a rent of Rs. 105-15-1 pice was held under the then proprietors and included the land now in controversy. On the 25th November 1793, that is, shortly after the Permanent Settlement had come into force, on the 22nd March 1793, the land in suit was sold by the then tenure-holder to the predecessor-in-interest of the defendant, on the allegation that the rent proportionately payable in respect of the land conveyed was Rs. 1913 annas 17 gandas 1 kara. The purchaser, thereupon went to the proprietor, and in order to secure recognition as a separate tenure-holder, obtained from him a sanad which recited the conveyance and entitled him to continue in occupation on payment of the amount of rent mentioned from generation to generation. The contention of the landlord is that this sanad created a new tenure; while the contention of the tenant is that there was no breach in the continuity of the pre existing tenure. In my opinion, it is perfectly clear that the contention of the respondent is well founded on principle. There is no dispute that the tenure was transferable. The purchaser, consequently, under the deed of sale, acquired the interest of a tenure-holder in the land conveyed to him. The only object why a sanad was obtained was to enable him to pay rent separately in respect of the land purchased by him, in other words, to separate his liability for rent from liability of the holder of the remainder of the tenure. Now, it is well settled that the continuity of a transferable tenure is not affected

by such division or by consolidation James Hills v. Huro Lall Sein 3 W.R.R 135; Kazee Khoda Newaz v. Nubo Kishore Raj 5 W.R. 10, Rulings 53 The decision in Uday Chandra Kaji v. Nripendra Narayan Bhup 1 Ind. Cas. 4 : 30 C. 287 : 13 C.W.N. 410, which is apparently an authority in support of the contrary view, overlooks, as I had occasion to point out in Adit Singha v. Sukhraj Rai 21 Ind. Cas. 380 : 17 C.L.J. 435 the pre-existing law on the subject in this Court. Besides as it turned upon the construction of Clause (3) of Section 50 of the Bengal Tenancy Act, it has no bearing upon the case before us.

9. In the view I take of the effect of the purchase of the tenure by the predecessor-in-interest of the defendant and of the sanad granted to him by the then proprietor, it is clear that the tenure must be deemed in law to have existed from before the Permanent Settlement. The plaintiff is, consequently, not competent to enhance the rent of the tenure u/s 6 of the Bengal Tenancy Act.