

(1911) 01 CAL CK 0052
In the Calcutta High Court

Chandra Kumar Singh Roy

APPELLANT

Vs

Kali Prosad Chuckerbutty

RESPONDENT

Date of Decision : 16-01-1911

Acts Referred:

Citation : 9 Ind. Cas. 223

Hon'ble Judges : Woodroffe, J;Carnduff, J

Bench : Division Bench

Judgement

Carnduff, J.—The facts of this case may be thus briefly stated: One Surja Kumar Singh and the appellant together held the whole of Mouzah Kastagura on mokarari, in" payment of Rs. 470 per annum to the superior landlord. The share of rent for which each was responsible was, therefore, Rs. 235. On the 7th August 1882, Surja created a subordinate mokarari of his one-half share by leasing it to the appellant for Rs. 560 a year, exclusive of the rent due to the superior landlord. In other words, the appellant undertook to pay Surja annually a fixed sum of Rs. 560 clear, further expressly undertaking; to discharge Surja's share of the rent due to the superior landlord. The superior landlord has recently--in 1900--had the rent of the entire mouzah raised by suit from Rs. 470 to Rs. 1,175; and the appellant's case was, and is, that, as he has now to pay the superior landlord for Surja's share Rs. 587 instead of Rs. 235, he should be called on to pay, in respect of the subordinate lease Rs. 560 minus Rs. 325, that is Rs. 208 instead of Rs. 560. As the respondent is the mortgagee of one-half of Surja's share, he sued for only one-half of Rs. 560, and the appellant contended, as above, that he should be held liable for one-half of Rs. 208, that is, for Rs. 104 only.

2. Both the lower Courts have disallowed this plea, and, I think rightly. The mokarari patta of 1882 is clear in its terms. It does not mention the amount of the rent then payable to the superior landlord; and when it refers to the rent fixed ("dharjya"), it must mean the rent for the time being fixed. The appellant, however, although the point has not been taken in his grounds of appeal, relies

before us upon the recital to the mortgage, which was executed in 1898, that is to say, before the enhancement of the superior landlords rent to Rs. 1,175. Now, it seems to me that that document cannot be used as an aid to the construction of the earlier patta; and if any authority is required in this connection, I may refer to the judgment of this Court in the case of Baneswar Mukherji v. Umesh Chandra Chakrabarty 37 C. 626 : 7 Ind. Cas. 875. I may add, too, that even if that document could be taken into consideration, it would not, so far as I can see, help the appellant, for its effect seems to be to assign the whole of the rent reserved and fixed at Rs. 280 for the half share to the respondent.

3. Then, if we took at the conduct of the appellant, we find that it tells against him, for, as pointed out by the lower appellate Court, he has all along been paying at the full rate of Rs. 560 per annum.

4. The result is that this appeal must, in my opinion, be dismissed with costs.

Woodroffe, J.

5. I agree; and I would add that even assuming that the assignment was admissible, a point which I need not consider, it does not help the appellant; as it was given at a date before the enhancement.