
(1922) 01 CAL CK 0037
In the Calcutta High Court

Chandy Charan Law

APPELLANT

Vs

Sreemutty Azizernessa and Others

RESPONDENT

Date of Decision : 11-01-1922

Acts Referred:

Bengal Tenancy Act, 1885 — Section 179

Citation : 80 Ind. Cas. 315

Hon'ble Judges : Henderson, J; Chatterjee, J

Bench : Division Bench

Judgement

1. The only question involved in the appeal relates to interest on rent payable by the tenant under a kabuliyat.

2. The interest stipulated to be paid was 2 per cent. per annum.

3. The Courts below held that the tenant had no permanent mocrurary right in the land and that, therefore, the landlord was not entitled to interest at the stipulated rate and accordingly interest at 12 per cent. only was allowed.

4. It is contended on behalf of the plaintiff-landlord that the interest of the tenant was that of a mocrurari permanent tenure-holder and that, having regard to the provisions of Section 179 of the Bengal Tenancy Act, he is liable to pay interest at the rate stipulated in the kabuliyat.

5. The kabuliyat describes the tenure as a darsikmi kayami taluka and states that the rent is payable in ten kists. It then goes on to say:

I down to my sons, son's sons and so on in succession, being vested with the right to make a gilt and sale of the land covered by this kabuliyat, shall hold and enjoy the same, with the greatest felicity on payment of the rent, and on making improvements in the Mahal by excavating and filling up tanks, ditches and wells, making bastu and garden, constructing passages and roads and planting trees, etc., and by keeping intact the limits and boundaries as before.

6. There is no doubt, therefore, that it was a permanent tenure and also

heritable. The power of transferability was expressly granted.

7. The only question is whether the rent was fixed.

8. The word "Mocurrari" has not been used in the document and there is no express provision in the document that the rent shall not be enhanced. But there is some indication in the document to show that the parties did not intend that there should be an enhancement of rent. The kabuliyat provides that if there was an increase in the land on measurement, the tenant would have to pay rent separately for the excess area at the rate stipulated in the kabuliyat. That shows that the rent was a fixed one, because it could not have been intended that the tenant would pay for the excess area at the rate stipulated in the kabuliyat and at the same time would have to pay at an enhanced rate for the original area mentioned in the kabuliyat.

9. Then, there are other terms in the document such as "There will be no remission of rent on account of decrease in the area of land except on the ground of the land being washed away by river, that the tenant shall be responsible for all losses and profits in respect of the land under settlement arising in consequence of drought, inundation, failure of crops, the land lying patit and Providential visitation etc., which also go to indicate that the tenure was not a ryoti holding but a permanent mocurrari tenure.

10. It is pointed out that there is a provision in the kabuliyat for payment of interest at 2 per cent. as well as damages at 25 per cent. and it is contended that the provision is a final one, but no damages have been claimed and only interest at 2 per cent. per mensem has been claimed in the suit.

11. It is also contended that the rate of interest is very high. But there is no evidence on the record to show that any undue influence was exercised by the Zemindar. We are unable, therefore, to give any relief to the defendant on this ground.

12. We are of opinion that the right of the tenant under the kabuliyat is a permanent Mocurrari right and the plaintiff, therefore, is entitled to interest at the rate stipulated in the kabuliyat.

13. The same points arise in S.A. Nos. 1886, 1904, 2159 of 1919; and 300, 301, 322 and 374 of 1920 in which the tenancies are tenures and in S.A. Nos. 1893 and 2158 of 1919 in which the lands, though ryoti, are held at fixed rates. The above decision, therefore, will govern them all.

14. The result is that all the appeals are allowed and the plaintiff will be entitled to get interest at the rate stipulated in the kabuliyat.

15. Each party to bear his own costs in this Court and the lower Appellate Court, the plaintiff being entitled to get costs in the Court of first instance on the amount which will be found due to the plaintiff under the decree of this Court.