

**(1921) 11 PAT CK 0012**  
**In the Patna High Court**

Eklal Jha and Others

APPELLANT

Vs

William Meling Grant and Others

RESPONDENT

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**Date of Decision :** 22-11-1921

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 29, 29(3)

**Citation :** 64 Ind. Cas. 332

**Hon'ble Judges :** Ross, J

**Bench :** Single Bench

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## **Judgement**

Ross, J.—These are three appeals by the defendants against the decree of the District Judge of Bhagalpur modifying the decree of the Munsif in three suits for rent. The plaintiffs are patnidars of Shibpur hal patti and Shibpur sabiq patti and the defendants are their tenants. There were two main questions before the Munsif;

- (1) Whether the defendants held land in excess of the land settled with them; and
- (2) What is the rent lawfully payable by the defendants?

2. Both the Munsif and the District Judge decided the first point in favour of the defendants. There is a cross-objection in this, Court by the plaintiffs against this finding, but this was not pressed and must be dismissed. The only question in debate here is the rate of rent. It is unnecessary to go into the early history of the holdings. The District Judge finds that the tenants had occupancy rights prior to 1888, when the first of a series of three kabuliyatt was executed, By this kabuliyat which is drawn as a settlement for a term of 10 years of land which was already the jote of the tenant, the tenant agreed to grow indigo on one-fourth of the holding at the choice of the landlord, getting the seed free and stipulated price for the crop. There is a recital that the conditions regarding indigo are according to the ancient custom of the village and that on these very conditions the rent has been fixed. There is a penalty of one rupee a bigha excess rent over the entire holding for the rest of the term in case the tenant in

any year refuses to give one-fourth of his land for indigo. In 1902 fresh kabuliyats were executed in similar terms for a period of 7 years. In 1909 the third kobuliyat of the series was executed, This document differs from the earlier in two respects: (1) It begins with a recital, untrue as it appears from the findings of both the Courts below, as to the length of the lugga by which the settlement was made. This is a matter affecting the first of the two main questions referred to above. (2) It recites that by reason of the tenant growing indigo on one fourth of his land the proprietors had settled the land at a less rent (kam shara men), but the proprietors had now stopped the manufacture of indigo and hence the tenant agreed to the enhanced rent which had been imposed upon his holding and he and his heirs and representatives have and will have no objection thereto. This enhancement is at the rate of 12 annas a bigha. The existing rent is at about Rs. 3 per bigha. Consequently the enhancement is twice as much as is allowed by Section 29 of the Bengal Tenancy Act and the agreement is void unless it is protected by Section 29(3). That is the question for decision in these appeals.

3. In order that this clause may operate three factors must concur:

- (1). That the raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of his landlord;
- (2) That he is released from the obligation of cultivating this crop; and
- (3) That he deems the rent which he agreed to pay fair and equitable.

4. The Munsif held that the first factor was not present. He discussed the evidence of the plaintiffs witnesses and found that none could say that the rent fixed for the defendant's holding was specially low. He refers in particular to three witnesses who speak about the rent. All that the witnesses say is that the rent was low in consideration of growing indigo. But they admitted that they did not know anything about the settlement with any of the defendants and, therefore, they could not say that the rent was specially low. He also refers to the admission of one of the plaintiffs witnesses that the rent payable was higher than in the neighbouring lands. He discusses the kabuliyat of 1888 and shows that the defendants did not enter under that kabuliyat, which consequently did not show the incidents of the tenancy at its origin.

5. The learned District Judge reversed this finding in the following terms: "The former rate at which respondents held was specially low, as appears from the oral evidence as well as from their own admissions in the kabuliyats." The learned Counsel contends that this is a conclusive finding of fact. But the finding itself is not in terms of the section and does not amount to a finding of the fact which the section requires; and it is not a fair judgment of reversal. The learned District Judge does not indicate what the oral evidence is that proves the fact required whereas the Munsif has shown that the oral evidence does not prove it. The kabuliyats of 1888 and 1902 say nothing about a low rate of rent, nor can it be inferred from their terms. There remains only the recital in the kabuliyat

whose validity is the question in issue, and the learned Counsel relies mainly on this. He also relies on the fact that the rent has never been enhanced as leading to an inference of specially low rate of rent in consideration of growing indigo. If any inference was to be drawn from the mere fact of non-enhancement, it would apparently be that the rent was already high. But there may have been many reasons for non-enhancement and this fact by itself does not prove anything. The rent might have been enhanced and still be specially low, and it might never have been enhanced and still not be specially low.

6. As to the kabuliyat of 1909, it is argued that it is evidence on which the District Judge could have based his finding. It contains an admission. If the admission is true and sufficient, the kabuliyat is good so far as this factor is concerned. From the fact that the kabuliyat is now repudiated as void, it must be taken that the tenants now deny the admission to be true. In these circumstances the admission itself will not prove the truth of what it states. It is not for the defendants to rebut the kabuliyat but for the plaintiff to establish it. Such a kabuliyat as this cannot establish itself. A tenant is a person under a partial disability in the matter of contract. This contract exceeds his capacity to contract unless the statement as to the rate of rent is true. That statement is now denied and if the contract is to stand, it must be shown to be true. Moreover, it is necessary to consider the sufficiency of the admission. What Section 29 (3) requires is that the tenant has held his land at a specially low rate of rent in consideration of growing a particular crop, This must mean that a purpose of the tenancy is the growing of a particular crop and, in consideration of that, the rent is not merely a low rent but a rent specially low on that account. Now this admission shows neither of these facts. All that can be gathered from it is that at the time of the kabuliyat of 1883 a less rent was fixed than would otherwise have been fixed, because the proprietors wanted indigo on one-fourth of the land. It shows nothing about the purpose of the then existing tenancy nor about the previous rent, and there is no evidence that the rent was ever less than Rs. 3 a bigha. The admission, therefore, is nothing to the purpose and I must hold that the first factor is not present.

7. It is even more clear that the second factor is not present either. The District Judge holds that by the kabuliyat of 1909 the tenants obtained an unconditional release for all time from an obligation to grow indigo. But was there any obligation then existing under the kabuliyats of 1888 and 1902 there certainly was; but the terms of these kabuliyats had run out and the obligation to grow indigo had ceased with them unless it was a purpose of the tenancy. But the learned District Judge has pointed out that the origin of the tenancy is lost in obscurity. There is no evidence that a purpose of the tenancy was the growing of indigo and no such incident appears in the Record of Rights. Consequently when the kabuliyat of 1902 came to an end, there remained no obligation on the tenant and he could use his holding as he pleased. The release in 1909 is, therefore, illusory and of no consideration and the agreement is bad for this reason also. It is unnecessary to consider the third factor.

8. In the result 1 must hold that this kabuliyat of 1909 on which the claim to enhanced rent rests is void. The appeals are decreed and the decree of the District Judge is set aside and the decree of the Munsif restored.

9. The appellants will get their costs in this Court and in the Court of the District Judge.

10. The cross-objection is dismissed.