

(1919) 04 CAL CK 0017
In the Calcutta High Court

Guru Charan Nandi and Others	Vs	APPELLANT
Sarab Ali and Shona Bibi and Others		RESPONDENT

Date of Decision : 24-04-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 115, 35

Citation : AIR 1919 Cal 405(2) : 52 Ind. Cas. 79

Hon'ble Judges : N.R. Chatterjea, J; Duval, J

Bench : Division Bench

Judgement

Second Appeal No 2129 of 1917.

1. This appeal arises out of a suit for recovery of arrears of rent and also for enhancement of rent.
2. The defendant was entered in the Record of Rights as an occupancy raiyat and not as a raiyat holding at fixed rates.
3. The Courts below have disallowed enhancement on the ground that the defendants have been holding at a fixed rent from the time of the Permanent Settlement.
4. It appears, however, that there was a Record of Rights in 1899, that is, 17 years before the institution of the present suit. A period of 35 years during which the defendant proved uniform payment of rent covers a period of 18 years before the final publication of the Record of Rights and another period of 17 years subsequent to such Record of Rights
5. Section 115 of the Bengal Tenancy Act lays down that when the particulars mentioned in Section 102, clause(b), have been recorded under this chapter in respect of any tenancy, the presumption u/s 50 shall not thereafter apply to that tenancy.
6. In the present case the defendant was recorded in the Record of Rights as an occupancy raiyat u/s 102, Clause (b) of the Bengal Tenancy Act and the

presumption, therefore, u/s 50 cannot apply to the case.

7. In the case of Maharaja Radha Kishore Manikya Bahadur v. Umed Ali 12 C.W.N. 904, it was held by Mr. Justice Doss that notwithstanding the provisions of Section 115 of the Bengal Tenancy Act, the tenant was entitled, upon proof of uniform payment of rent for 20 years before the Record of Bights were framed, to the benefit of the presumption under Sub-section (2) of Section 50, and that the word "thereafter" in Section 115 refers to a period subsequent to the publication of the Record of Bights. This latter proposition was not accepted in the case of Pirthi Chand Lal Chowdhury v. Basarat Ali 3 Ind. Cas 449 : (F.B.) 37 C. 30 C.W.N. 1149 : 10 C.L.J. 343. See also the case of Harihar Persad v. Ajub Misir 22 Ind. Cas. 604. 45 C. 930 and the recent unreported decision in Second Appeals Nos. 2008 and 2483 of 1917, decided by Woodroffe and Huda, JJ., on the 9th April 1919 [Muralidhar Aditya v. Radh Mohan Hazra 51 Ind. Cas. 552. It is, however, unnecessary for us to consider whether any presumption arises with reference to uniform payment of rent before the final publication of the Record of Righto, because in the present case the period for which uniform payment of rent has been proved extends only to 18 years and no presumption u/s 50 could, therefore, arise. So far as the period subsequent to the publication of the Record of Rights is concerned, no presumption arises u/s 50 of the Bengal Tenancy Act, having regard to the provisions of Section 115 of the Act. The period, moreover, is less than 20 years. The judgments of the Courts below, which proceeded entirely upon the presumption, which, in their opinion, arose in the case from the uniform payment of rent, must, therefore, be set aside on this point.

8. The decree of the lower Court, in so far as it relates to arrears of rent, is affirmed and the case must be sent back to the Court of first instance in order that the question of enhancement of rent may be tried out. Costs will abide the result.

9. S.A. No. 2131 of 1917.

10. In this case also, the plaintiff sued for enhancement of rent and the claim for enhancement has been disallowed on the ground that there was a "natural presumption" that the tenant was holding at a rent fixed in perpetuity.

11. In this case it is found by both the Courts below that the tenancy came into existence only 40 years ago and that the defendant had proved payment of rent at a uniform rate for 23 years. In this case, also, there was a Record of Rights 14 years before the institution of the suit. No presumption can arise for the period subsequent to the publication of the Record of Rights. There remains, therefore, only a period of nine years prior to the publication of the Record of Rights, for which uniform payment of rent has been proved.

12. It is said that apart from the presumption u/s 50, a "natural presumption" as to the fixity of the rent arises from the fact of uniform payment of rent for a long period. As we have already stated, the tenancy came into existence only 40 years ago long after the Permanent Settlement; uniform payment has been

proved only for 28 years and 19 years before the suit the tenants were recorded only as occupancy raiyats. We do not think, in these circumstances, that any presumption could possibly arise as to the rent being fixed.

13. With reference to the observations made by the learned Subordinate Judge as to the natural presumption arising from uniform payment of rent for 28 years, we may refer to the case of Jagabandhu Saha v. Magnamoyi Dassi 36 Ind. Cas. 884 : 24 C.L.J. 363 at p. 370 : 44 C. 555 : 22 C.W.N. 89 where the learned Judges observed (with reference to two plots of agricultural land held by occupancy raiyats whose rent had not been altered for 40 years) as follows:" "Can we hold, as a matter of law, that the only inference legitimately deducible from the facts is that at the inception of the tenancies, the rent was, by agreement of parties, fixed in perpetuity? It is plain that the inference as to the terms of the original contract is drawn from the conduct of the parties. The only conduct of the plaintiff or his predecessor whereupon reliance is placed by the defendant is his omission to claim enhancement of rent for a period of 40 years. Does such for-bearance on the part of the landlord necessarily justify the inference that the contract of tenancy in its inception was for payment of rent fixed in perpetuity? The answer must, obviously, be in the negative. The conduct of the landlord, though consistent with the hypothesis that the rent was fixed in perpetuity, is equally consistent with a very different hypothesis. The landlord might not have sued for enhancement of rent, because, in view of the amount of rent already fixed, as well as the character of the land comprised in the tenancies, no further rent could be legitimately claimed. We have no information about the history of the holding or the condition of the land included therein. We do not know what would be the fair rent at the present time or would have been the fair rent during the years past. In these circumstances, from the mere forbearance on the part of the landlord to claim enhancement of rent even for 40 years, the inference does not follow as a matter of course that the original contract was for payment of rent by the tenant at a fixed rate for ever. If we were to accede to the contention of the defendant appellant, we would be driven to hold, in substance, that every landlord who refrains from the institution of a suit for enhancement of rent of an occupancy holding, does so at his peril and that his forbearance, however just, will raise a presumption against him that the tenant held at a rent fixed in perpetuity." We entirely agree with these observations.

14. Much stress was laid by the learned Pleader for the respondent on the concluding portion of the judgment of the learned Subordinate Judge, where he says that the plaintiffs are not entitled equitably to enhancement of rent. The only ground upon which the learned Subordinate Judge so held is the position of the land by the side of a river and there being no crops grown on it. We do not think that that is what is contemplated by Section 35 of the Bengal Tenancy Act. That section, we think, relates to the amount of assessment and does not refer to the grounds upon which a Court has to determine whether enhancement should be allowed or not.

15. The decree of the lower Court, in so far as it relates to arrears of rent, will stand and the case must be sent back to the Court of first instance for a decision of the question of enhancement of rent.

16. Costs will abide the result.