
(1921) 06 CAL CK 0029
In the Calcutta High Court

Hamid Ali

APPELLANT

Vs

Ram Kumar Poddar and on his death his Heirs Ane Legal
Representatives, Ramesh Chandra Poddar Aed Ors.

RESPONDENT

Date of Decision : 01-06-1921

Acts Referred:

Bengal Tenancy Act, 1885 — Section 153

Citation : 62 Ind. Cas. 639

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

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—This is an appeal by Hamid Ali, who is the fourth defendant, from the judgment of the learned Subordinate Judge of Chittagong.

2. The suit was a rent-suit, and the plaintiffs were described as talukdars, and they sued for a sum of Rs. 180. The plaint alleges that the defendants are in possession, in sikmi taluka right, of a sikmi taluka in the name of their predecessors in respect of 6 cottas 13 3/4 gandas of land at an annual jama of 60 aris of bhag paddy; that the defendants delivered the bhag paddy prior to the period in suit, but they have not delivered the paddy in claim in spite of the plaintiffs' demand. The plaintiffs, therefore, pray that the amount shown below may be decreed against the defendants, at the rate of Rs. 30 for 50 aris of bhag paddy per year the price of two aris being Re, 1, for the years 1275-76, 77-78 M.E., together with the cost of the suit and future interest:--Then, particulars are given follows:

Rs. a. p. Price of paddy for those years ... 120 0 0 Cesses at 2-annas 6 pies per rupee ... 18 0 0 Then, there was a further claim bhet (which I understand was a goat claimed) at Re. 1-8 per year ... 6 0 0 Then, damages at 4 annas per rupee ... 36 0 0 Making a total of ... 180 0 0 3. The first Court held that, on the construction of the kabuliyat, the plaintiff was entitled to recover Rs. 15 as the money value of the paddy and not its market price, and it gave judgment for the plaintiff for the arrears claimed at an annual jama, of Rs.

15 with certain Cesses and damages at 25 per cent. The question of the goat does not arise in this appeal.

4. On appeal to the lower Appellate Court that decree was reversed and the learned Subordinate Judge held that the plaintiff was entitled to get the rent claimed for the years in question plus cesses, i.e., at the rate of Rs. 30 per year: and he farther directed that the plaintiff should have damages at 20 per cent. (20 per cent. may be a mistake for 25 per cent)

5. The first question I have to consider is, the point that was taken by the learned Vakild for the respondent, namely, that in this case there was no right of appeal u/s 153 of the Bengal Tenancy Act. There seems to be nothing in that point, because the amount claimed for rent in the suit did exceed Rs. 100, and, therefore, Section 153 would not be applicable.

6. On the merits of the appeal, in my judgment, the decision of the first Court was correct. The decision of this case depends upon the true construction of the terms of the kabuliyat. We have had a translation supplied by the learned Vakild for the appellant, which with one alteration has been accepted by the learned Vakild for the respondent; and, as so altered, the material parts of the kabuliyat are as follows:--It is headed "settlement kabuliyat at bhagi paddy rent." Then, it sets out the names of the parties, then some 5 columns: the first column is headed "Tenant"--that column is not filled up; the next column is headed ""Total land"--that column is not filled up; the next column is headed "Fixed rent of paddy--" underneath that heading appear the words "60 aris," the fourth column is headed ""The prise of that paddy" or, as it was translated by the learned Vakild for the respondent, ""prises thereof" (it does not matter which translation is taken, as both mean the same thing); under that heading appear the words "Rs. 15;" the fifth column is headed ""kist""--that column is not filled up. In the body of the kabuliyat we find these words: We execute this kabuliyat of the aforesaid land on taking a dayemi keyemi shikmi taluka patta from you, that we shall deliver the aforesaid paddy according to the kists mentioned above to you or to your heirs. If we fail to deliver paddy on some pretext or other you will be entitled to realise the same or its price as stated above with damages at 25 per cent, in accordance with the laws in force." The words as stated above must refer to the words "Rs. 15" which appear under the fourth column: and, indeed, the learned Judge who heard the appeal in the lower Appellate Court construed this part of the kabuliyat in this way: he said, "There is a further statement that, in case of default to pay the paddy, the paddy or Rs. 15 will be payable with compensation by suit." That is not a literal statement of the terms of the kabuliyat but it is the learned Judge's summary of the meaning of it, and, in my judgment, it is a correct summary. But the learned Judge having come to that conclusion as to the meaning of the clause, I have some difficulty in understanding how he came to the decision at which he arrived in his judgment. I should have thought that, having decided that that clause meant that in case of default to deliver paddy the contract was that the paddy or Rs. 15 should be

payable with compensation, the learned Judge ought to have upheld the decision of the first Court. But the learned Judge based his decision upon the assumption that the Rs. 15, the value of the paddy, was inserted in the deed for the purpose of stamp duty and registration of the document. He said, "Rs. 15 is stated in the deed as due as the value of the produce at the time of its execution and also for purposes of stamp duty and registration". With due respect to the learned Judge, it seems to me that there is nothing in the kabuliyat which would justify him in coming to the conclusion that the Rs. 15 had been inserted in the deed for the purposes of stamp-duty and registration. There is a distinct contract by the parties that, if default is made in the delivery of the paddy, the landlord should be entitled to realize the same, i.e., the paddy, or its price ""as stated above;" must mean the Rs. 15. In this suit the plaintiffs do not seek to realize the paddy; the plaintiffs sue for the price of the paddy. In my judgment, the meaning of the contract is clear.

7. I desire to refer to two cases, which were cited during the argument, not for the purpose of throwing any light upon the construction of the words in question, because the terms of the contracts in the cases, to which I now refer, are different from the terms of the contract in this case, but on account of some remarks which were made by my learned brother, Mr. Justice Mookerjee, and myself as to the principle upon which these cases should be dealt with.

8. The first case is Nilmadhab Mahapatra v. Keshab Lal Mahapatra (sic) where I find I said at page 26 C.L.J. 96Ed.] follows: "In my opinion this matter must depend upon the construction of the contract, and the construction of the contract only; we have no right to make any speculation as to whether certain passages were entered in the contract for some motive which is not apparent on the contract itself". Again, in Asutosh Mukhopadhyaya v. Haran Chandra Mukherjee (sic) I find, I there said C.L.J. 40 ED.] "in the next place, the parties should be held to that which they have said in the contract and I do not see why the Court should speculate and as a result of that speculation arrive at the conclusion that the important provision to which I have referred had been inserted merely for the purpose of determining the registration fee". My learned brother, Mr. Justice Mookerjee, said at page 30 C.L.J. 45--[Ed.] "it has been suggested by the learned Vakil for the respondents that this was not the true intention of the parties; but we must remember that we have to give effect only to such intention as the parties were able to express by the language used in the document; the Court is not concerned with any unexpressed intention which they might have entertained". In this case the Court must ascertain the intention of the parties from the ordinary meaning of the terms of the contract and the fair inference to be drawn therefrom. To my mind, it is clear from the terms of the contract that the parties intended to provide that, in default of the delivery of the paddy, if the plaintiffs desired to realize the price of such paddy, the price was to be taken as fixed at Rs. 15, we cannot now go beyond the terms of the contract and speculate as to whether that sum was inserted in the contract for the purposes of stamp duty and registration. There is nothing in the contract to show that that

was the intention: in fact, the terms of the contract show the contrary. Further if the parties had desired to provide that, in the event of default being made in the delivery of the paddy, the plaintiffs should be able to recover the market price of the paddy prevailing at the time of the default, it would have been easy for the parties to have used language which would have provided for that. But when the parties provide in plain terms, as in this case, that a fixed price shall be paid in the event of the paddy not being delivered, in my judgment they ought to be held to their contract. In my judgment, the case is really without difficulty, and I should not have delivered judgment at this length but for the fact that we were assured that cases of this nature frequently come before the lower Courts, and, in, my judgment, it is important that the lower Courts in deciding these cases, should construe these contracts and ascertain the intention of the parties, having regard to the ordinary meaning of the language used therein, and the fair inference which can be drawn from" the terms thereof: they should not speculate whether certain terms or words were inserted in the contract from some motive or for some object which cannot be ascertained from the terms of the contract. For these reasons, in my judgment, this appeal should be allowed, the decree of the lower Appellate Court cut aside and that of the Court of first instance restored with costs both in this Court and in the lower Appellate Court.

Richardson, J.

9. I add a few observations as I was a party to the judgment delivered by Brett, J , in *Sheik Isaf v. Gopal Chandra Dey* 8 Ind. Cas. 396 : 12 C.L.J. 593. In that case we held that the money equivalent of the rent in kind fixed by the contract was inserted for the purposes of meeting the requirements of the Stamp Registration Law. That was not the earliest case on the subject, and there was some authority for the view which we took. I will say frankly, that, as at present advised, in the light of later decisions, in taking that view on the contract then before us we trespassed beyond the limits of legitimate interpretation into the region of speculation. The oases have been collected by Chatterjea, J., in *Gurudas Sen v, Gobinda Chandra Sinha* 53 Ind. Cas. 382 : 30 C.L.J. 41 : 23 C.W.N. 1021 : 47 C 133. No doubt, every contract of this kind must be considered with reference to its own terms, but the language must be interpreted according to its natural and ordinary meaning and, where the money equivalent of the rent in kind is fixed by the agreement between the parties, words cannot be inserted which the parties did not use, for the purpose of altering the natural meaning of the document, That would be, as the learned Chief Justice has pointed out, to make a contract for the parties which they did not make for themselves.

10. In the present case, in the contract now before us, it seems to me that the parties did agree upon a money equivalent for the rent in kind primarily reserved. The rent reserved is primarily 60 aris of paddy, but the price thereof is stated without any qualification to be Rs. 15 and the kabuliyat contains the following stipulation by the lessee: If we fail to deliver paddy on some pretext or

other you will be entitled to realize the same or its price as stated above with damages at 25 percent, in accordance with the laws in force". Clearly, therefore, the plaintiff was not entitled to sue for the present market price of the paddy and that is how his claim is put in his plaint. If he desired relief in the form of money, he was only entitled to sue for the money equivalent fixed by the contract.

11. It was suggested in the course of the argument that the plaintiff might have framed his suit as a suit, not for any money equivalent but for the actual quantity of paddy in arrears. It was farther suggested that in that case Order XX, Rule 10 of the CPC would have applied. That rule runs as follows: "Where the suit is for moveable property, and the decree is for the delivery of such property the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had". If that rule has any application at all to a suit for rent in kind, then, if a decree had been made for delivery of the paddy, it must also have stated the amount of money to be paid as an alternative if delivery could not be had, and that amount would, as it seems to me, have been the money equivalent of the paddy according to the contract.

12. It may, perhaps, be of some interest if I refer to a passage in Woodfall's Law of Landlord and Tenant (20th Edition, page 475) which shows the two ways in which rent in kind can be reserved. The passage runs thus: "A restriction with regard to leases made by the Colleges in the Universities of Oxford and Cambridge, and by the Colleges of Winchester and Eton, is created by Statute 18 Eliz, C. 6 (c) by which it is directed that one third of the old rent then paid should for the future be reserved in wheat or malt, reserving a quarter of wheat for each 6 Section 8d., or a quarter of malt for every 5 Section or that the lessor should pay the same according to the price that wheat and malt should be sold for in the market next adjoining to the respective Colleges, on the market-day before the rent becomes due". Then, further on the learned author says: "Until quite recent times many College leases were framed more or less in accordance with this Act, but the practice of so framing them has now been almost entirely abandoned." The passage illustrates how rent may be reserved in kind so that, on default, the price recoverable should vary with the market-rate.

13. It is said that the construction which we put on the contract may lead to hardship, because the landlord will not get the paddy for which he primarily bargained and which he may require for the purposes of his household. That may be so, but it is our duty to construe the contract as it was made by the parties. It may be possible for the plaintiff to obtain commutation of the paddy rent u/s 40 of the Bengal Tenancy Act. That is a mere suggestion. I do not know whether it is open to the plaintiff to take proceedings under that Section or whether such proceedings would or would not improve his position; that is entirely a matter for him to consider.

14. As to the preliminary objection that was taken to the competency of the appeal, I agree with my Lord that there is nothing in that point. It seems to me that a question as to the amount payable in money in default of the payment of

rent in kind is "a question of the amount of rent annually payable by a tenant" within the meaning of Section 153 of the Bengal Tenancy Act.

15. For these reasons, I agree that the appeal should be allowed.