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**(1914) 01 CAL CK 0014**  
**In the Calcutta High Court**

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|---------------------------------------|------------|
| Haradas Acharyea Chaudhuri and Others | APPELLANT  |
| Vs                                    |            |
| Abhoy Charan Dhupi and Others         | RESPONDENT |

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**Date of Decision :** 12-01-1914

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 105

**Citation :** AIR 1915 Cal 109 : 24 Ind. Cas. 58

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

**Bench :** Single Bench

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## Judgement

Teunon, J.—These two appeals arise out of proceedings u/s 105 of the Bengal (sic) Act and have been heard together by consent.

The tenure in question known as a nim-howla was created by a patta (Exhibit C) dated 29th of Falgoon 1251. The patta provides that the tenant should pay rent for years 1252 and 1253 at the rate of Rs. 22-8 and from the year 1254 onwards (that is to say) at the rate of Rs. 100 plus 2 annas in the rupee under the denomination of Akhrajat kharach that is, to say, at the rate of Rs. 112-8 per annum.

2. It then appears that some time before or about 1902 the tenure was divided and that the tenant-respondents in Appeal No. 1407 hold the one-half and the tenant-respondents in Appeal No. 1816 the other half.

3. A Record of Rights under Chapter X of the Bengal Tenancy Act having been pre-pared and finally published, the plaintiff-landlord applied u/s 105 of the Act for a settlement of fair rent in respect of the two tenures, in other words for an enhancement of rent.

4. Both the Courts below have held that the rent payable is fixed in perpetuity and the plaintiff-landlord now appeals.

5. His contentions before me are, first, that on the true construction off the patta the rent of the tenure or tenures is liable to enhancement, secondly, that on the

division of the tenure the original contract of tenancy was abrogated and, thirdly, that in the case of the tenure forming the subject-matter of Appeal No. 1816 there has, in fact, been a variation or enhancement.

6. I am of opinion that none of these contentions can be accepted.

7. In support of the first contention the appellant relies on the absence of the word mokarari and distinguishes the present case from the cases relied on by the Courts below, Golam All v. Gopal Lal Thakoor 9 W.R. 65. and Soorasoonderee Dabea v. Golam All 19 W.R. 141 : 15 B.L.R. 125., on the ground that while in those cases the leases were jungal bari or reclamation leases in the present case the lands are char lands. But it cannot be disputed that the lease or patta creates a permanent tenure, and when without specifically limiting the period it provides that from the year 1254 onwards the rent shall be so much, it thereby, in my opinion, fixes the rent for all time. The reference contained in the patta to Regulation VIII of 1816, it may be said lends additional support to this view. It is the case of the plaintiff that there has been a decision of the tenure resulting, in the creation of two distinct- tenures, that is the plaintiff-landlord does not hold the tenants of the one-half responsible for the rent payable in respect of the other half. I do not understand that the tenants contest that position. If that be so, it may be safely held that there has been a division of the original tenure resulting in the creation of two distinct tenancies but, however, that may be, on the facts found it is" clear that apart from the creation of separate liabilities the two halves continue . to be held on the terms contained in the patta of 1351 and that there has been no new contract or abrogation of the original contract of tenancy.

8. The third contention is based on the fact that in the Record of Rights in respect of the half with which Appeal No. 1816 is concerned, the jama and the akhrajat kharach have been consolidated and the rent payable has been shown as Rs. 56-4-0. It is contended that the akhrajat kharach being an abwab the entry represents an enhancement. I am, however, of opinion that on the facts of this case the item designated akhrajat kharach is not an abwab and in this connection I may refer to the case of Kalanund Singh v. Eastern Mortgage Agency Co. Limited 19 Ind. Gas. 701 : 18 C.L.J. 83. However that may be it is clear that the consolidation of the two items payable or believed to be payable does not constitute any variation or enhancement.

9. It should be noted that the respondents took a preliminary objection that in these cases, in view of the provisions contained in Section 109A (3) of the Act, no second appeal lay. But th is objection clearly cannot be sustained and need not be discussed .

10. In the result the appeals fail and are dismissed with costs.