

(1925) 05 CAL CK 0049
In the Calcutta High Court

Hem Chandra Sen and Others

APPELLANT

Vs

Girish Chandra Saha and Others
 Arjun Dhupi and
Others Vs Hem Chandra Sen and Others

RESPONDENT

Date of Decision : 11-05-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 50

Citation : AIR 1926 Cal 710 : 92 Ind. Cas. 107

Hon'ble Judges : Cuming, J;Chakravarti, J

Bench : Division Bench

Judgement

Chakravarti, J.—This is an appeal by the plaintiffs and arises out of an application made by the landlord u/s 105 of the Bengal Tenancy Act. The question with which we are concerned is whether the landlords are entitled to an enhancement of rent u/s 30(6) of the Bengal Tenancy Act.

2. The defence of the defendants was that the tenancy was held at a permanent fixed rent; and the tenants in order to establish their claim relied upon the presumption u/s 50 of the Bengal Tenancy Act. The Assistant Settlement Officer in the Court of first instance found that as regards the khatians which are now before us that is Khatian Nos. 17 and 25, the presumption was rebutted because it was shown that additional land was added to the holding at a time subsequent to the Permanent Settlement. In that view the Trial Court held that the tenants were not entitled to the presumption u/s 50 of the Bengal Tenancy Act.

3. On appeal by the defendants the learned Special Judge has held, reversing the judgment of the First Court, that the tenants were entitled to the presumption under that section. The learned Judge found that the variation of the rents was based on the variations in the area of the holding and, therefore, he held that the presumption u/s 50 applied to the holding as it is now in possession of tenants with the added area.

4. In this second appeal, by the plaintiffs it has been contended by the learned

Vakil for the appellants that, upon the findings of the learned Judge, the tenants were not entitled to the presumption u/s 50 of the Bengal Tenancy Act.

5. It appears to us that the contention of the appellants ought to succeed only partially. Upon the findings it appears that there was an old tenancy with a definite rent which was held for more than 20 years at a uniform rent; but it appears farther from the findings that additional rent was added for additional area and in recent times the rent of the old tenancies was paid along with the additional rent for the added area. The question, therefore, arises is this: Do the tenants by holding additional lands for additional rent and paying the same along with the old rent and the old area lose the presumption as regards the old area and the old rent also? We think not. And also we think that the tenants are not entitled to the presumption for the added area although they are entitled to the presumption for the area which they held as was presumed before the Permanent Settlement. In a case like this the onus of proving what the old area was and what the area is subsequently added, is upon the tenants, and if they show what the old rents were then they are entitled to the presumption u/s 50 so far as the old tenancy is concerned, because, by showing that for 20 years immediately before the suit they were holding a particular area at a particular rent, the presumption u/s 50 arises. But the tenants, it seems to us, are not, by adding a new area to the old tenancy, entitled to get the benefit of the presumption so far as the added area is concerned--for the simple reason that the tenants or their predecessors were not holding those lands from before the Permanent Settlement. They were added subsequently. In that view we think that so far as Khatians Nos. 17 and 25 are concerned, the case must go back to the lower Appellate Court and that Court will, if there is evidence, find what was the area and the rent of the old tenancy and the area and the rent which were subsequently added. But so far as the old tenancy is concerned, the tenants will be entitled to a presumption as to the fixity of rent. But so far as the added area is concerned the learned Special Judge will fix the rent for that area.

6. In this view this appeal succeeds and the decree of the lower Appellate Court is varied to the extent.

7. As regards Khatian No. 29, it has been admitted before us by the learned Vakil that he cannot press the point as regards this khatian, because, there has been no proper representation of the parties.

8. The appeal, therefore, so far as this khatian is concerned is dismissed. As the appeal succeeds only in part we do not make any order as to costs of this appeal.

In Appeal No. 1951 OP 1922.

9. The defendants are the appellants and this appeal arises out of an application made by the plaintiffs-landlords for settlement of fair and equitable rent. The Special Judge in Khatians Nos. 3, 10, 13, 20, 22, 24, 30, 33, 34, 42, 47, 49 and 55 allowed the claim of the plaintiffs-landlords. Against the decree the present appeal has been preferred by the defendants. It appears that some of the

plaintiffs-respondents died and no application was made within three months for substitution of the heirs. The matter came up to this Court and it was ordered on the application of the appellants that the appeal so far as the deceased respondents were concerned abates and the appeal would proceed against the other respondents and to appellants gave it up so far as the deceased respondents were concerned. It being an appeal against a decree in favour of the plaintiffs it appears to us that the appeal is incompetent when some of the plaintiffs are not before the Court and the appeal has failed so far as the deceased respondents are concerned. In that view it is obvious that to hold otherwise would lead to an incongruous position. The deceased plaintiff's heirs would be entitled to an enhanced rent as settled by the Special Judge and if we allowed this appeal the tenants would be entitled to hold the tenancy at a fixed rent so far as some of the plaintiffs landlords are concerned. In the absence of some of the plaintiffs not represented in the lower Appellate Court the whole appeal becomes incompetent.

10. The result is that this appeal is dismissed with costs.

Cuming, J.

11. I agree.