
(1922) 06 CAL CK 0045
In the Calcutta High Court

Hon"ble Raja Reshee Case Law, C.I.E.

APPELLANT

Vs

Bhuban Mohan Pal and Others

RESPONDENT

Date of Decision : 15-06-1922

Acts Referred:

Bengal Tenancy Act, 1885 — Section 106

Citation : 72 Ind. Cas. 1047

Hon'ble Judges : Chotzner, J;Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff landlord in a suit u/s 106, Bengal Tenancy Act, for correction of, an entry made in the Record of Rights. In the Record of Rights the defendant is entered as holder of a permanent tenure held under a fixed rent. The tenancy is governed by the terms of a lease granted by. Raja Prithwi Ballabh Pal to Kadem Ali on the 16th February 1862. The Courts below have come to divergent conclusions as to the true construction of this document. The Trail Court held that the rent was not intended to be fixed in perpetuity. The lower Appellate Court has held that rent was fixed in perpetuity. The case now before us bears some resemblance to that of Raja Reshee Case Law v. Satish Chandra Paul 64 Ind. Cas. 774 : 35 C.L.J. 90 :A.I.R. (1922) (C) 123. There, as here, the document was written in Ooriya character, possibly by a half literate scribe. The language of the document is a mixture of Bengali, Urdu, and Ooriya. The document states, in the first place, the different classes of land, their area and rent payable in respect thereof. The area is then totalled and found to amount to 275 bighas 4 cattas and 14 chaltacks. The aggregate rent is stated to be Rs. 65-8. This rent is described as thicca mckra and the question in controversy is, what is the precise import of this phrase. The document proceeds to lay down that the grantee would enjoy the land by reclamation arid cultivation from generation to generation and that the jama previously mentioned, would be paid into the office of the landlord from year to year. Here, then, are two express covenants as to the meaning of which there is no room for doubt, namely, first, that the tenancy would be held from generation to generation; and, secondly,

that the rent previously stated would be paid from year to year by the tenant to the landlord. If we read these two covenants together, which follow one after the other, the implication manifestly is that the rent previously, fixed is to be paid from generation to generation; in other words, the, rent is fixed in perpetuity. This conclusion is reached without reference to the words "thicca mokra." Those words, as interpreted in Raja Reshee Case Law v. Satish Chandra Paul 64 Ind. Cas. 774 : 35 C.L.J. 90 :A.I.R. 1922 C 123 only strengthen the view we take. The word "thicca" is used: to indicate the creation of a tenancy and the word "mokra" is in reality "mokarari," indicating that the rent was fixed in perpetuity. Consequently, if these two, words are taken together, there is no escape from the inference that the rent was; fixed in perpetuity; in other words," that the tenure was not only maurasi but mokarari. There is, however, a sub sequent clause in the document which may militate against this view; namely, the clause which bars the alienation of the tenancy without the consent of the landlord. We are of opinion that this by itself is not a conclusive indication that the rent was not intended to be permanent. On the other hand, as has been pointed out by the Subordinate Judge on the authority of the decisions in Nil Madhab Sikdar v. Narattam Sikdar 17 C. 826 : 8 Ind. Dec. 1895 : Basarat Ali Khan Manirulla 2 Ind. Dec. 416 : 36 C. 745 : 10 C.L.J. 49 the covenant is inoperative as there is no clause for re-entry. Indeed, the tenancy has been treated as transferable and the present occupant is not the original holder, but a successor-in-interest who has obtained the land by transfer.

2. We are of opinion that the conclusion of the. Subordinate Judge is correct, and that the appeal must be dismissed with costs. We assess the hearing fee at one gold mohur.