
(1900) 01 CAL CK 0002
In the Calcutta High Court

Hosain Ali Khan

APPELLANT

Vs

Hati Charan Shaw

RESPONDENT

Date of Decision : 09-01-1900

Acts Referred:

Bengal Tenancy Act, 1885 — Section 46(9), 49(6)

Citation : (1900) ILR (Cal) 476

Hon'ble Judges : Wilkins, J; Rampini, J

Bench : Division Bench

Judgement

Rampini and Wilkins, JJ.—This is a suit brought under the provisions of Chapter VI of the Bengal Tenancy Act. The plaintiff's claim is a three-fold one. First, he seeks to enhance the rent of the defendant, who is a non-occupancy raiyat; secondly, he claims arrears of rent at the old rate; and, thirdly, he asks for ejectment of the defendant, if the defendant refuses to pay enhanced rent, or if he fails to pay the arrears of rent within the period that may be fixed by the Court for him to pay them.

2. The Subordinate Judge has given the plaintiff a decree for arrears of rent at the old rate for the year 1302, and has ordered the defendant to be ejected, if he does not pay within three weeks. And he has further given the plaintiff a decree for rent in the future at the rate of 14 annas per bigha which is 2 annas more than the rate at which the defendant has hitherto been paying.

3. The plaintiff was not satisfied, however; and appealed to the District Judge, who affirmed the decree of the Court of First Instance.

4. The plaintiff now appeals to this Court; and his contention is that the lower Courts have misunderstood the provisions of Sub-section 9 of Section 46 of the Bengal Tenancy Act. They have apparently been under the impression that the provisions of this sub-section are exhaustive, and that when it is therein prescribed that the Court "shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village,"

this means that it must have regard to such rents only; that this is the only way in which a Court can carry out the provisions of Sub-section 6 of Section 46; and that as in this case the plaintiff admits that there is no land in the village of a similar description and with like advantages to those of the subject of the present suit, therefore the defendant's rent cannot be enhanced at all.

5. We are of opinion that in this respect both the lower Courts have misunderstood the provisions of Section 46 of the Tenancy Act. It is laid down in Sub-section 6 of Section 46 that "if a raiyat refuses to execute the agreement tendered by him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding."

6. Sub-section 6 does not prescribe in what way the Court is to determine what is a fair and equitable rent for the holding, but it only restricts the Court in finding what is a fair and equitable rent in one way, that is to say, by the provisions of Sub-section 9 of Section 46 already cited.

7. Now, Section 46 nowhere says that, if there be no lands of a similar description and with similar advantages in the same village, the Court is to stay its hand and refuse to carry out the provisions of Sub-section 6. It only prescribes that, if there be such lands, then the Court must regard the rents generally paid by raiyats for them, and we do not think that it was intended that if there be no such lands, then it should be impossible to enhance the rent of non-occupancy raiyats in any way.

8. Under these circumstances we think that the case must go back to the Lower Appellate Court and to the Court of First Instance to receive the evidence which the plaintiff tenders, and which he proposes to give to show what will be a fair and equitable rent for the holding in this case, which, according to the plaintiff, should be calculated at the rate of one-fourth of the value of the actual present produce of the land.

9. We do not say, and we must not be understood as saying, that such is the proper way to estimate what is a fair and equitable rent to be paid by the defendant. It is for the Court of First Instance and of first appeal to determine what is a fair and equitable rent. We can give no instructions or assistance with reference to how they are to determine this rent, because the law is silent on this point. We can only say that in our opinion Sub-section 9 is not exhaustive, and that the provisions of Sub-section 6 must be carried out by them to the best of their ability.

10. We set aside the decree of the Lower Appellate Court and remand the case to that Court to be determined in accordance with these instructions. Costs will abide the result.